

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 JOHN KARPINSKI, CLARK COUNTY  
4 NATURAL RESOURCES COUNCIL and  
5 FUTUREWISE,

6 Petitioners,

7  
8 v.

9 CLARK COUNTY,

10 Respondent.

11  
12 And

13  
14 GM Camas L.L.C., Johnston Dairy, et al and  
15 MacDonald Properties, Daryl Germann, Curt  
16 Gustafson, T3G, LLC and Hinton Development  
17 Corporation, Building Industry Association of  
Clark County and City of LaCenter,

18 Intervenors.  
19

Case No. 07-2-0027

**FINAL DECISION AND ORDER**

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21  
22 **I. SYNOPSIS**

23 Just two years after the adoption of its 2004 Growth Management Act (GMA) update, on  
24 September 9, 2007, Clark County passed Ordinance 2007-0913 de-designating 19 areas of  
25 previously designated lands of long-term commercial significance consisting of 4,351 acres  
26 and added that land to Clark County cities' UGAs. John Karpinski, Clark County Natural  
27 Resource Council, and Futurewise (Petitioners) challenged the County's environmental  
28 review and public participation processes, the de-designation of the agricultural lands of  
29 long-term commercial significance, and the addition of these lands the UGA.  
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1 This order finds that the County's choice of a no action alternative complies with the State  
2 Environmental Policy Act (SEPA) and related rules. Additionally, the Board finds that  
3 although the County's public participation process was not without irregularities and at times  
4 may not have seemed to be fair, the irregularities are not clearly erroneous violations of the  
5 GMA's public participation requirements.  
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7 The GMA goals and requirements decisions by the Courts provide parameters for the  
8 decisions of the County and the Growth Management Hearings Boards. The Washington  
9 Department of Community Development also provides guidance for counties on how to  
10 determine the long-term commercial significance (LTCS) of agricultural lands through WAC  
11 365-190-050(WAC). Past decisions of the Boards have held that to de-designate LTCS  
12 agricultural lands the County must go through the same process and evaluate the  
13 requirements of the statutes and the WAC applicable to the designation of these lands. The  
14 County went through a process to de-designate agricultural lands and at the same time  
15 considered adding them to the UGA.  
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18 To assist them in their de-designation process the County developed a principle/values  
19 statement that put economic development as its primary goal to increase the tax bases of  
20 the county, city, and school districts. The Board finds that the Supreme Court held that the  
21 GMA creates a mandate to designate agricultural lands because the Act includes goals with  
22 directive language and specific requirements.<sup>1</sup> The Board finds that the GMA economic  
23 development goal cannot supersede the agricultural mandate defined by the Supreme  
24 Court. The Supreme Court in a later case also set out a three part-test for evaluating  
25 agricultural lands.<sup>2</sup> These two factors come into play when designating agricultural lands.  
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30 <sup>1</sup> *Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38 (2005)

31 <sup>2</sup> *Lewis County v Western Washington Growth Management Hearings Board*, 157 Wn.2d488, 501,139  
32 P.3d1096, 1103(2006) .

1 The County developed a matrix that to evaluate the factors set out in WAC 365-190-050 as  
2 well as factors to consider for de-designating agricultural lands. The Board finds that some  
3 of the factors such as closeness of the rural centers were not within the parameters of the  
4 GMA, while others such as alternative value under other uses cannot be determinative in  
5 designating agricultural lands but can be considered.

6  
7 The Board evaluated the County's decision from its Matrix and its deliberations. We find  
8 that the County's de-designations for the others areas challenged comply with the GMA.  
9

10 We find that the designation of the following areas do not comply: **CAMAS – CA-1 (342.56**  
11 **acres), CAMAS – CB (402.19 acres), LA CENTER LB-1 (218.81 acres), LA CENTER LB-2**  
12 **(244.53 acres), LA CENTER LE 112.47 acres), RIDGEFIELD – RB-2 (199.69 acres),**  
13 **VANCOUVER – VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER –**  
14 **VB (780.43 acres), WASHOUGAL – WB (116.06 acres).**

15  
16  
17 Those areas that have been de-designated that comply with the GMA can be added to the  
18 UGAs. Those which do not can be added because they are not characterized by urban  
19 growth so cannot be added pursuant to RCW 36.70A.110(1) and (3).  
20

## 21 **II. PROCEDURAL HISTORY**

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23 See Appendix A for a complete procedural history.  
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## 25 **III. BURDEN OF PROOF**

26 For purposes of board review of the comprehensive plans and development regulations  
27 adopted by local government, the GMA establishes three major precepts: a presumption of  
28 validity; a "clearly erroneous" standard of review; and a requirement of deference to the  
29 decisions of local government.  
30

31 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and  
32 amendments to them are presumed valid upon adoption:

1 Except as provided in subsection (5) of this section, comprehensive plans and  
2 development regulations, and amendments thereto, adopted under this chapter are  
3 presumed valid upon adoption.

RCW 36.70A.320(1).

4 This same presumption of validity applies when a local jurisdiction takes legislative action in  
5 response to a noncompliance finding; that legislative action is presumed valid. The only  
6 time that the burden of proof shifts to the County is when the County is subject to a  
7 determination of invalidity.<sup>3</sup> Here, no finding of invalidity was imposed so the burden  
8 remains on the Petitioners.  
9

10  
11 The statute further provides that the standard of review shall be whether the challenged  
12 enactments are clearly erroneous:

13 The board shall find compliance unless it determines that the action by the state  
14 agency, county, or city is clearly erroneous in view of the entire record before the  
15 board and in light of the goals and requirements of this chapter.

16 RCW 36.70A.320(3)

17 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
18 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
19 121 Wn.2d 179, 201, 849 P.2d 646 (1993).  
20

21 Within the framework of state goals and requirements, the boards must grant deference to  
22 local governments in how they plan for growth:

23 In recognition of the broad range of discretion that may be exercised by counties and  
24 cities in how they plan for growth, consistent with the requirements and goals of this  
25 chapter, the legislature intends for the boards to grant deference to the counties and  
26 cities in how they plan for growth, consistent with the requirements and goals of this  
27 chapter. Local comprehensive plans and development regulations require counties and  
28 cities to balance priorities and options for action in full consideration of local  
29 circumstances. The legislature finds that while this chapter requires local planning to  
30 take place within a framework of state goals and requirements, the ultimate burden and  
31 responsibility for planning, harmonizing the planning goals of this chapter, and  
32 implementing a county's or city's future rests with that community.

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<sup>3</sup> RCW 36.70A.320(2) and (4).  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 4 of 87

1 RCW 36.70A.3201 (in part).

2  
3 In sum, the burden is on Petitioners to overcome the presumption of validity and  
4 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
5 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).  
6 Where not clearly erroneous, and thus within the framework of state goals and  
7 requirements, the planning choices of local government must be granted deference.  
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#### 9 10 **IV. ISSUES PRESENTED**

- 11 1. In the adoption of Ordinance 2007-09-13:  
12 Did Clark County fail to include an adequate “no-action” alternative and fail to include  
13 an adequate range of alternatives to adopting an increase in the population growth  
14 targets, expanding the Urban Growth Areas, rezoning properties, and amending the  
15 development regulations in the EIS released on May 4, 2007 in violation of RCW  
16 43.21C.030, RCW 43.21C.031, and WAC 197-11-440(5)(b)(ii)?
- 17 2. In the adoption of Ordinance 2007-09-13:  
18 a. Did Clark County violate RCW 36.70A.020(8), 36.70A.050(3), 36.70A.070, (1),  
19 (3), and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating  
20 agricultural land in violation of RCW 36.70A.170, in violation of RCW  
21 36.70A.050(3) and WAC 365-190-050, and in violation of the County’s own  
22 criteria for designating agricultural land contained within the comprehensive  
23 plan and the GMA’s requirements for internal consistency in RCW  
24 36.70A.070?
- 25 b. Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060,  
26 36.70A.110(1) & (3) in Ordinance No. 2007-09-13 by including land within  
27 Urban Growth Areas that is not characterized by urban growth, should be  
28 designated as agricultural land, and is adjacent to agricultural land?
- 29 c. Did Clark County violate RCW 36.70A.020(10), 36.70A.060(1) & (2),  
30 36.70A.110(1) & (3) and 36.70A.172(1) in Ordinance No. 2007-09-13 by  
31 including land that is not characterized by urban growth, and with extensive  
32 critical areas, inside of Urban Growth Areas?
- d. Did Clark County violate RCW 36.70A.020(12), 36.70A.070, (3), (6) and the  
GMA’s requirements for internal consistency in RCW 36.70A.070, in

1 Ordinance No. 2007-09-13 by expanding Urban Growth Areas without  
2 adequate capital facilities and transportation plans?

3 3. Did Clark County fail to:

- 4 a. Have a public participation plan or broadly disseminate that plan to the public;  
5 b. Provide for early and continuous public involvement in the comprehensive plan  
6 update;  
7 c. Provide adequate public notice of proposed amendments to the Comprehensive  
8 Plan and rezones;  
9 d. Provide timely and complete public notice of hearings and the documents that are  
10 being considered; and  
11 e. Allow public testimony and comment when proponents are allowed to testify; and  
12 f. Other public participation failures;

13 In violation of RCW 36.70A.020(11), RCW 36.70A.035(1), RCW 36.70A.070, material  
14 preceding subsection (1), RCW 36.70A.130(2), and RCW 36.70A.140?

## 15 V. DISCUSSION OF THE ISSUES

### 16 A. ENVIRONMENTAL REVIEW

17 ***Issue: In the adoption of Ordinance 2007-09-13:***

18 ***Did Clark County fail to include an adequate “no-action” alternative and fail to***  
19 ***include an adequate range of alternatives to adopting an increase in the***  
20 ***population growth targets, expanding the Urban Growth Areas, rezoning***  
21 ***properties, and amending the development regulations in the EIS released on May***  
22 ***4, 2007 in violation of RCW 43.21C.030, RCW 43.21C.031, and WAC 197-11-***  
23 ***440(5(b)(ii))?***

#### 24 **Petitioners Position**

25 Petitioners argue that the County’s Environmental Impact Statement (EIS) fails to present  
26 an adequate “no action” alternative and fails to provide for an adequate range of alternatives  
27 to expanding the UGA area. In support of this assertion, Petitioners contend the “no action”  
28 alternative should have analyzed environmental impacts based on the growth rate adopted  
29 in the County’s 2004 CP, which was 1.69%, as opposed to the 2% growth rate the County  
30 used. Petitioners assert this decision amounts to both an *action* and a *policy choice*  
31 necessitating environmental review.  
32

1 According to Petitioners, the County's EIS underestimated the adverse environmental  
2 impacts of the preferred alternative by utilizing the same 2% growth rate within both  
3 alternatives.<sup>4</sup> Therefore, Petitioners assert this error reduced the "effectiveness of the EIS  
4 as a tool by which to make an educated decision" and resulted in a "failure to analyze the  
5 impacts of amending the CP to increase the growth rate and population targets."<sup>5</sup>  
6

7  
8 Petitioners further alleged the County violated WAC 197-11-440(5)(b)(ii) when it failed to  
9 provide a "no action" alternative that could be evaluated and compared to other alternatives.  
10

### 11 **County's Position**

12 The County begins by challenging Petitioners' standing to assert a SEPA claim and argues  
13 that the Western Board should adopt the SEPA standing test applied by the Central Puget  
14 Sound Hearings Board.<sup>6</sup> The County points out this test requires a petitioner to  
15 demonstrate that the interest they are seeking to protect are within the zone of interests  
16 protected by SEPA and that they have suffered an injury-in-fact.<sup>7</sup>  
17

18  
19 As to the substance of the argument, the County argues that a revision in its growth rate  
20 forecast is *factual* and, therefore, is not an *action* requiring environmental review.<sup>8</sup> Rather,  
21 the environmental action being analyzed was the review of the County's UGA boundaries,  
22 with the "no action" alternative based on no adjustment to the boundaries as opposed to a  
23 "no action" alternative based on the revised growth rate as Petitioners contend.<sup>9</sup> The  
24 County contends that a "no action" alternative generally encompasses "what would be most  
25 likely to happen if the proposal did not occur;" and that the fundamental proposal under  
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29 <sup>4</sup> The County's "no action" alternative shows a 2% annual growth with no UGA expansion; the preferred  
30 alternative shows a 2% annual population growth rate with UGA expansion.

31 <sup>5</sup> Petitioners' Prehearing Brief, at 11.

32 <sup>6</sup> County Prehearing Brief – SEPA, at 4.

<sup>7</sup> County Prehearing Brief – SEPA, at 4

<sup>8</sup> County Prehearing Brief – SEPA, at 5

<sup>9</sup> County Prehearing Brief – SEPA, at 5-6.

1 consideration is expansion of the UGA boundaries.<sup>10</sup> The County further asserts the  
2 SEPA rules allow discretion in developing a reasonable “no action” alternative which it  
3 exercised by utilizing existing UGA boundaries and a growth rate that provided for a more  
4 realistic approach.<sup>11</sup>

5  
6 Intervenor TG3 LLC and Germann

7 Like Clark County, Intervenor contend that, even in a GMA-based appeal, in order to raise  
8 a SEPA claim the Petitioners must satisfy the *Trepanier* test in order to obtain standing.<sup>12</sup>

9 Intervenor argue the Petitioners have failed to allege a specific injury to either themselves  
10 or their property and, therefore, lack standing.<sup>13</sup>

11  
12 In regard to the substantive SEPA matter, Intervenor, like the County, concede that  
13 although an amendment to the County’s CP is subject to SEPA review, the change in  
14 growth rate is merely a projection and, therefore, “utilizing a different growth rate factor is  
15 not an ‘action’ subject to SEPA review.”<sup>14</sup> Intervenor note that although the OFM  
16 population projection range is an adopted CP policy, it is within the “County’s discretion to  
17 adopt any figure within that range that in its judgment reflects a more accurate  
18 measurement of population growth.”<sup>15</sup> Further, Intervenor identify that SEPA is similar to  
19 the National Environmental Policy Act (NEPA) for which guidance interpreting Seamy be  
20 used.<sup>16</sup> Intervenor point to *Laguna Greenbelt v. U.S Dept. of Transportation*<sup>17</sup> which  
21 upheld the sufficiency of a “no action” alternative despite the fact that it was based on the  
22 same growth assumption as the preferred alternative.<sup>18</sup>

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27 <sup>10</sup> County Prehearing Brief – SEPA, at 8.

28 <sup>11</sup> County Prehearing Brief – SEPA, at 7-8

29 <sup>12</sup> Intervenor T3G/Germann Prehearing Brief – SEPA, at 1-2.

30 <sup>13</sup> *Id.*

31 <sup>14</sup> *Id.* at 5-6.

32 <sup>15</sup> *Id.* at 8.

<sup>16</sup> *Public Utility District No. 1 of Clark County v. Pollution Control Hearings Board*, 137 Wash. App. 150, 158,151 P3d1067(2007)

<sup>17</sup> *Laguna Greenbelt Association v. U.S. Dept. of Transportation*, 42 F3d 517, 525-26(9<sup>th</sup> Cir 1994)

<sup>18</sup> Intervenor T3G/Germann Prehearing Brief – SEPA, at 9.

1  
2 **Petitioners' Reply**

3 In reply, Petitioners point to this Board's holding in *WEAN v. Island County* which affirmed  
4 previous cases finding that participation standing is sufficient to bring a SEPA petition  
5 before the Board and urges this holding to be affirmed.<sup>19</sup> Petitioners assert they have not  
6 only GMA participation standing but their interests and injuries satisfy the *Trepanier* test.<sup>20</sup>  
7 Petitioners counter the County's and Intervenors' assertions in regard to the "no action"  
8 alternative, asserting that: (1) it is not a "mere creation of the SEPA rules;" (2) is "not limited  
9 by the definition of reasonable alternative;" (3) requires an analysis of "what would occur if  
10 the new growth assumptions were not adopted;" and (4) must be "analyzed in sufficient  
11 detail to permit a comparative evaluation of the alternatives."<sup>21</sup> Lastly, Petitioners contend  
12 the *Laguna Greenbelt* decision cited by Intervenors does not support a finding that the "no  
13 action" alternative is sufficient because, not only is the necessary analysis to support the  
14 amended growth targets missing, but the *Laguna Greenbelt* rationale actually supports the  
15 use of the adopted 2004 CP as the "no action" alternative.<sup>22</sup>  
16  
17

18 **Board Discussion**

19 A. Standing

20  
21 The County and Intervenors contend that the Board should find, as our colleagues at the  
22 Central Board hold, that in order to raise SEPA issues a party must satisfy the two-part  
23 standing test set forth by the Court in *Trepainer*. This Board recently addressed this very  
24 question and concluded that the GMA's standing provision, when read together with the  
25 GMA's grant of jurisdiction in the same section, unambiguously provides that participatory  
26 standing is sufficient to bring a SEPA petition before the boards.<sup>23</sup> Neither the County nor  
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<sup>19</sup> Petitioners' Reply, at 6-7

31 <sup>20</sup> Petitioners' Reply, at 7-9.

32 <sup>21</sup> *Id.* 9-13.

<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> *WEAN v. Island County*, WWGMHB Case No. 03-2-0008, FDO, at 18-20 (Aug. 25, 2003)

1 the Intervenor have demonstrated that this is an erroneous interpretation of the GMA's  
2 standing provisions and, therefore, we continue to adhere to this holding today.

3  
4 The Board further notes that the evidence in the record shows the Petitioners adequately  
5 participated on this issue, including an appeal of the Final Supplemental Environmental  
6 Impact Statement (FEIS). Neither the County nor the Intervenor contests this.

7  
8 **Conclusion:** Petitioners having participated in the environmental review process below  
9 have standing to raise a challenge to the County's FSEIS.

10  
11 B. No Action Alternative

12 Petitioners argue that because it failed to analyze a proper "no action" alternative, the  
13 County's environmental analysis for the amendment to its 2004 CP does not comply with  
14 SEPA.<sup>24</sup> The proper "no action" alternative, according to Petitioners, should have been an  
15 analysis of the 1.69% annual growth rate, the rate used as the basis for the County's 2004  
16 CP.<sup>25</sup> Petitioners assert the "rule of reason" and WAC 197-11-440(5)(b) support their  
17 position. Alternatively, the County contends that using a 2% annual growth rate complies  
18 with the "rule of reason" and is within the broad discretion given to counties and cities by  
19 WAC 197-11-440 (5)(b)(ii) and WAC 197-11-442.<sup>26</sup> The County also claims the 1.69%  
20 growth rate assumption is a factual determination and, therefore, is exempt from SEPA.  
21 The County emphasizes RCW 43.21C.090 gives the County's decision substantial weight.

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25 The County implies a "no action" alternative may not be required in its EIS for the 2007  
26 Clark County comprehensive plan since the "no action" alternative is not mentioned in  
27 Chapter 43.21C RCW. The Board disagrees. Not only has this Board stated, "Under SEPA  
28 rules, evaluation and comparison of the "no-action" alternative is a mandatory element of an  
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32 <sup>24</sup> Petitioners' Prehearing Brief at 8.

<sup>25</sup> Id. at 9-10.

<sup>26</sup> County Prehearing Brief – SEPA, at 8  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 10 of 87

1 EIS,<sup>27</sup> but WAC 197-11-440(5)(b)(ii) requires that a “no action” alternative be evaluated and  
2 compared to other alternatives and RCW 43.21C.095 requires substantial deference to this  
3 rule.

4  
5 The County and Intervenors also contend that the selected annual growth rate was a factual  
6 determination, not a policy choice or an amendment to the County’s CP; thus, not an action  
7 subject to SEPA. The County compares its selected growth rate to Washington Office of  
8 Financial Management’s (OFM) preparation of population estimates for counties and cities  
9 in to regard to UGA sizing, which pursuant to WAC 197-11-800(17) (Data and Research)  
10 are exempt from SEPA review.  
11

12  
13 WAC 197-11-800(17) provides:

14       Basic data collection, research, resource evaluation, requests for proposals (RFPs),  
15       and the conceptual planning of proposals shall be exempt. These may be strictly for  
16       information-gathering, or as part of a study leading to a proposal that has not yet  
17       been approved, adopted or funded; this exemption does not include any agency  
18       action that commits the agency to proceed with such a proposal.

19 The Board sees the growth rate as both a *factual assumption* and a *policy choice*. OFM  
20 does broad research to come up with population projections for the County to use in their  
21 growth management planning. While OFM does not make the policy choices for counties  
22 about how much growth to actually plan for, it does set the parameters. Similarly, within  
23 those parameters, the County selects a projected 20-year population on which to base its  
24 CP. This decision is a policy choice based on data, discussion, local knowledge, and  
25 opinion. The data the County consulted showed its annual growth rate had exceeded that  
26 which had been the basis for its 2004 CP for more than a decade.<sup>28</sup> The choice of annual  
27 growth rate may be looked at as part of a study - the EIS being the study - that leads to the  
28 proposal to amend the CP. At argument, the County pointed out other assumptions go  
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32 <sup>27</sup> *Hood Canal, et al. v. Jefferson County WWGMHB 03-2-0006* (Final Decision and Order, August 15, 2003).

<sup>28</sup> Exhibit 135.

1 into a proposal for a CP - such as market factors, buildable lands, and average household  
2 size - all of which have their foundation in data, some more than others.<sup>29</sup> These  
3 assumptions are then examined in the EIS to determine if the environmental impacts can be  
4 mitigated and also through the rest of the comprehensive planning process to ensure  
5 adequate capital facilities are available to support them. Ideally, these assumptions should  
6 not be a self fulfilling prophecy, as Petitioners contend, but can be changed during the  
7 environmental review process, if they are shown not to be sustainable. Because of the  
8 importance these assumptions play in the planning process, the annual growth rate and the  
9 resulting 20-year population projection that eventually becomes the basis for the CP are  
10 *fundamental assumptions*.

11  
12  
13 The Board of County Commissioners clearly saw the selection of the annual growth rate as  
14 an important policy choice, as shown through staff reports, news releases, and their  
15 deliberations.<sup>30</sup> Further, the CP describes the need to plan for increases in population as  
16 the policy thrust of the 2004-2024 CP based on the 2% growth rate and the resulting  
17 projected population of 584,310. The CP states that the population projection and  
18 allocations are goals, not just future estimates or guidelines.<sup>31</sup> From the evidence in the  
19 record and from the fundamental structure of the GMA itself, the Board concludes that the  
20 County's choice of the annual growth rate is *policy, a goal, and a change* from the 2004  
21 adopted CP.  
22  
23

24 Although the Board has concluded that a "no action" alternative is necessary and that the  
25 choice of annual growth rate is a fundamental policy choice and goal of the CP, the basic  
26 issue is still to be resolved: *Is the change in the population projection resulting from 2%*  
27 *annual growth rate the action that the County was required to analyze in its EIS, or, instead,*  
28  
29  
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31 <sup>29</sup> Exhibit 135.

32 <sup>30</sup> Exhibits 135, 145, 143, 158.

<sup>31</sup> 20- Year Growth Management Plan 2004-2024 at 14.

1 was it the evaluation of leaving the UGA boundaries intact the action to be analyzed by the  
2 County in its EIS?

3  
4 In evaluating this issue, the Board must consider the following laws and rules,

5 RCW 43.21C.090 directs,

6 In any action involving an attack on a determination by a governmental agency  
7 relative to the requirement or the absence of the requirement, or the adequacy of a  
8 "detailed statement", the decision of the governmental agency shall be accorded  
9 substantial weight.

10 WAC 197-11-440 (5) states (in pertinent part)

11 An EIS shall contain the following, in the style and format prescribed in the preceding  
12 sections... (5) Alternatives including the proposed action...

13  
14 (iii) Reasonable alternatives may be those over which an agency with jurisdiction has  
15 authority to control impacts either directly, or indirectly through requirement of  
16 mitigation measures.

17 The County argues, and the scoping notice for the EIS confirms, that the outcome of the  
18 EIS and comprehensive planning process was to be the adoption of a new urban growth  
19 boundary for Clark County:

20  
21 Since Clark County was adopted in 2004, conditions in the county as well as state  
22 and federal laws have changed, requiring corresponding changes in the  
23 comprehensive plan. In addition, more accurate data and ground-truthing of the  
24 current urban growth areas of available buildable lands data has been  
25 accomplished...

26 As a result, the Board of County Commissioners have adopted issues, planning  
27 assumptions and policy direction for reviewing and updating the County's growth  
28 management plan early in 2005.

29 The outcome of this EIS and comprehensive planning process will be the adoption of  
30 new urban growth boundaries for Clark County.<sup>32</sup>

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<sup>32</sup> Exhibit 5279 at 2  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 13 of 87

1 In contrast, Petitioners argue the County, in the scoping notice for the EIS, recognized that  
2 the assumptions in the 2004 plan would be the “no action” alternative for revising the 2004  
3 plan:

4  
5 The No-Action Alternative is the adopted September 2004 Growth Management Plan,  
6 with the adopted urban growth boundaries, planning assumptions, policies, and  
7 implementation ordinances.<sup>33</sup>

8  
9 Further, Petitioners argue the County’s Final EIS provides that the objective of the adopted  
10 2007 plan is to accommodate the projected demand for jobs and housing based on the  
11 projected growth assumptions.<sup>34</sup> The County answers that the CP consists of many  
12 assumptions and the “rule of reason” allows the County to limit the range of baseline  
13 assumptions and policies it needed to evaluate. Here, the change in the urban growth  
14 boundary is the one the County chose to evaluate.

15  
16 As provided in WAC 197-11-440 (5)(iii):

17  
18 Reasonable alternatives may be those over which an agency with jurisdiction has  
19 authority to control impacts either directly, or indirectly through requirement of  
20 mitigation measures.

21 The configuration of UGA boundaries is an alternative over which the County has authority  
22 to control the impacts. As the County argues, its decision to provide more useful  
23 information to the decision-makers by providing a “no action” alternative based a more  
24 realistic growth rate, as opposed to one which was at odds with actual growth for over a  
25 decade, is reasonable. This choice was consistent with the “rule of reason” and must be  
26 accorded substantial weight.<sup>35</sup>

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31 <sup>33</sup> Exhibit 5279.

32 <sup>34</sup> Exhibit 6372 at 1.

<sup>35</sup> RCW 43.21C.090.

1 The County points out that the CP consists of many assumptions and the “rule of reason”  
2 allows the County to limit the range of baseline assumptions and policies it needed to  
3 evaluate. The County chose one of the baseline assumptions, the 2004 UGA boundary.  
4 The Washington Supreme Court defined the “rule of reason”:

5 The mandate of SEPA does not require that every remote and speculative  
6 consequence of an action be included in the EIS. The adequacy of an EIS must be  
7 judged by application of the rule of reason. This is the approach adopted by the  
8 federal courts. In Trout Unlimited, the court stated at page 1283:

9 Appellants urge that the EIS is inadequate because it fails to discuss many possible  
10 environmental consequences. Many of these consequences while possible are  
11 improbable. . . . This is consistent with the (CEQ) Council on Environmental Quality  
12 Guidelines and the frequently expressed view that adequacy of the content of the EIS  
13 should be determined through use of a rule of reason. . . . A reasonably thorough  
14 discussion of the significant aspects of the probable environmental consequences is  
all that is required by an EIS.<sup>36</sup> (footnotes eliminated)

15 Additionally, WAC 197-11-440 (1) provides the following guidance:

16 The lead agency shall have more flexibility in preparing EISs on nonproject  
17 proposals, because there is normally less detailed information available on their  
18 environmental impacts and on any subsequent project proposals... The lead agency  
19 is not required under SEPA to examine all conceivable policies, designations, or  
20 implementation measures but should cover a range of such topics. The EIS content  
21 may be limited to a discussion of alternatives which have been formally proposed or  
22 which are, while not formally proposed, reasonably related to the proposed action.

23 While the County and Petitioners disagree on the reasons for the need to revise the 2004  
24 comprehensive plan, the record shows that the County spent time reviewing the data and  
25 revised several assumptions, including the growth rate. The County says the data showed  
26 that since 1990 the County’s growth rate had exceeded 2%. The County reasons it would  
27 have been unreasonable for them to use a growth rate less than was actually occurring.  
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32 <sup>36</sup> *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 345 (1976)

1 The County contends that the objective of the EIS was to evaluate the potential need for  
2 modifying the UGA boundaries because of both new data and a more reasonable  
3 assumptions in regard to the County's rate of growth, with the SEPA rules permitting  
4 discretion to the lead agency in the design of alternatives. Petitioners counter that the  
5 objective was an evaluation of the new population assumption and how best to  
6 accommodate it, with a "no action" alternative typically setting forth a scenario akin to having  
7 the action being evaluated not occur<sup>37</sup>. Petitioners contend, in this case, the EIS should  
8 have utilized a 1.69% growth rate for this very reason. The Board notes that a  
9 comprehensive plan is a non-project action based on broad range of assumptions and,  
10 therefore, it is not unreasonable for the County to chose as its baseline the current urban  
11 growth boundary to evaluate its new assumptions.  
12  
13

14 **Conclusion:** The County's non-project EIS analyzed a complex plan with many  
15 assumptions. Here, the County changed the assumptions and how those assumptions  
16 relate to the current urban growth boundary. While we reject the County's implication that a  
17 "no action" alternative might not have been needed in its EIS and that the choice of a growth  
18 rate and related population projection is not a goal or an important policy choice, the Board  
19 does not find that it was clearly erroneous for the County to have chosen the alternative of  
20 not amending the UGA boundaries as the "no-action" alternative. Analyzing whether the  
21 new population assumption and the other adopted assumptions will affect the UGA  
22 boundary falls within the "rule of reason," the flexibility given to counties and cities in  
23 designing non-project EISs by WAC 197-11-442, and RCW 43.21C.090's direction that the  
24 decision of the local government be given substantial weight - all supporting the County's  
25 action. The Board finds that this decision is not clearly erroneous.  
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32 <sup>37</sup> Petitioners cite *Barrie v. Kitsap*, where the court found that an EIS for an annexation and zoning change for a shopping center was inadequate, because Kitsap County did not analyze alternate locations for the shopping center. This decision and the *Laguna* decision cited by Intervenor TG3 analyzed more specific actions than a comprehensive plan proposal with many assumptions.

1 **B. PUBLIC PARTICIPATION**

2 *Issue : Did Clark County fail to:*

- 3 a. *Have a public participation plan or broadly disseminate that plan to the*  
4 *public;*  
5 b. *Provide for early and continuous public involvement in the comprehensive*  
6 *plan update;*  
7 c. *Provide adequate public notice of proposed amendments to the*  
8 *Comprehensive Plan and rezones;*  
9 d. *Provide timely and complete public notice of hearings and the documents*  
10 *that are being considered; and*  
11 e. *Allow public testimony and comment when proponents are allowed to*  
12 *testify; and*  
13 f. *Other public participation failures;*

14 *In violation of RCW 36.70A.020(11), RCW 36.70A.035(1), RCW 36.70A.070, material*  
15 *preceding subsection (1), RCW 36.70A.130(2), and RCW 36.70A.140?*

16 **Petitioners' Position**

17 Petitioners allege several County actions violated the notice and public participation  
18 requirements of the GMA. First, the County's failure to disseminate its public participation  
19 plan deprived the public of the opportunity to prepare for and attend public hearings.  
20 Second, the County did not involve the public in drafting its values/principles statement  
21 that was the foundation on which the County undertook its CP update. Third, public notice  
22 for meetings was inadequate as exemplified by (1) the County's notice for November 29<sup>th</sup>  
23 work session, published on November 23<sup>rd</sup>, which because of the Thanksgiving holiday,  
24 gave only four days for public preparation, and (2) the County released the Board of County  
25 Commissioners' Preliminary Recommendations June 27<sup>th</sup> map on July 2, 2007 for the July  
26 5, 2007 public hearing, which gave only three days public notice, when the County's own  
27 ordinance requires 15 days. And, finally, the County invited only those who wanted to  
28 expand UGAs time to testify at a public meeting on UGA expansion. <sup>38</sup>

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32 <sup>38</sup> Petitioners' Prehearing Brief at 28-30.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 17 of 87

1 **County's Position**

2 The County asserts Petitioners' allegations rest on a violation of RCW 36.70A.140. The  
3 County maintains this GMA section does not require exact compliance with the programs  
4 and procedures if the spirit of the programs and procedures are observed. Also, the County  
5 declares that Petitioners have not shown any prejudice as a result of these alleged  
6 violations.<sup>39</sup>  
7

8 The County also contends it adopted a public outreach program and broadly disseminated  
9 it. The County points out its principles and values statement was announced to guide the  
10 public process, but was subject to continuing public process. When insufficient notice was  
11 given, the County asserts further opportunities to testify were provided. While those who  
12 wanted to expand the UGAs were given time at the meeting to address the County  
13 Commissioners without additional public comment, the County argues it provided other  
14 opportunities to members of the public to ensure involvement in the public process.<sup>40</sup>  
15  
16

17 **Petitioners' Response**

18 Petitioners respond that the County concedes it did not disseminate its public participation  
19 program as required. Further, Petitioners declare that there is no authority supporting the  
20 County's claim that they must make a showing of prejudice, which would be an impossibility.  
21  
22 <sup>41</sup>

23 **Board Discussion**

24 A. Dissemination of Public Participation Program

25 The record shows the County adopted a public participation program for revising its  
26 comprehensive plan.<sup>42</sup> At argument, the County conceded this program did not get  
27  
28  
29

30 <sup>39</sup> Clark County General Prehearing Brief County (County's General Prehearing Brief) at 26.

31 <sup>40</sup> *Ibid* at 26 and 27.

32 <sup>41</sup> Petitioners' Reply Brief at 30.

<sup>42</sup> Exhibit 109

1 published or distributed, but directed the Board to its CP and the Index to the record to  
2 review its extensive public participation process.

3  
4 The GMA sets forth various public participation requirements:

5 RCW 36.70A.140 requires (in pertinent part):

6 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall  
7 establish and broadly disseminate to the public a public participation program  
8 identifying procedures providing for early and continuous public participation in the  
9 development and amendment of comprehensive land use plans and development  
10 regulations implementing such plans. The procedures shall provide for broad  
11 dissemination of proposals and alternatives, opportunity for written comments, public  
12 meetings after effective notice, provision for open discussion, communication  
13 programs, information services, and consideration of and response to public  
14 comments.

14 RCW 36.70A.130(2) requires (in pertinent part);

15 Each county and city shall establish and broadly disseminate to the public a  
16 public participation program consistent with RCW 36.70A.035 and 36.70A.140  
17 that identifies procedures and schedules whereby updates, proposed  
18 amendments, or reviews of the comprehensive plan are considered by the  
19 governing body ...

20 RCW 36.70A.070 (preamble) requires (in pertinent part):

21 A comprehensive plan shall be adopted and amended with public participation  
22 as provided in RCW 36.70A.140.

23 Clark County's development regulations explain to the public the procedures for how its CP  
24 will be amended. <sup>43</sup>

25  
26 The revision to the CP is defined as a Type IV process. CCC 40.500.40 details the Type IV  
27 process. In codifying its CP amendment process, the County has complied with the  
28 requirements of RCW 36.70A.140.  
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<sup>43</sup> CCC 40.240.030(C).  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 19 of 87

1 Petitioners contend that despite this, the lack of distribution of the actual process for this CP  
2 revision (with a timeline) did not comply with the spirit of the GMA's public participation  
3 requirement because it did not allow citizens to adequately plan for their participation. The  
4 record shows Clark County adopted a public participation program<sup>44</sup> and advertised to the  
5 public how citizens could get involved in the CP update in May 2005.<sup>45</sup> While a detailed  
6 description with a timeline would have been ideal, our review of the Index to the Record  
7 shows that this process went on for two years and was extended on several occasions.  
8 Therefore, even if the County would have distributed a timeline, it would likely not have  
9 been accurate. The Board's review of the Index shows the public participation process was  
10 lengthy, broad, and generally with good notification through newspaper announcements and  
11 an e-mail distribution list.<sup>46</sup>  
12  
13

14 **Conclusion:** From our review of the record, the Board finds that the County's failure to  
15 disseminate its public participation program was not a clearly erroneous violation of the spirit  
16 of GMA public participation requirements.  
17

18 B. Lack of Public Participation in the Adoption of the County's Values and Principles  
19 Statement  
20

21 Petitioners argue the County adopted a principles and values statement (P/V Statement)  
22 that was integral to their decision making process without public participation. The County  
23 contends this statement was subject to continuous public review.  
24

25 The Board's review of this case's record show that the PV statement was a fundamental  
26 part of the County's process. Evidence of its fundamental place in shaping the CP is the  
27 preferred alternative and the Board of Commissioners deliberations on the decisions to de-  
28

29  
30 <sup>44</sup> Exhibit 20.

31 <sup>45</sup> Exhibit 127. This was added to the exhibits by the County at the Hearing on the Merits without objections  
32 from the Petitioners.

<sup>46</sup> Index to the Record at Index numbers 5434, 5495,6614, 5730, 5731, 5757, 5758, 5770, 5895, 5772, 6094,  
6368, 6367, 6277, 6278, 6390, and 6291, and the public hearings mentioned above

1 designate agricultural lands of long-term significance.<sup>47</sup> While the Board agrees with the  
2 Petitioners that this fundamental decision making piece should have had broader discussion  
3 with the public, adoption of this statement is not an amendment to the comprehensive plan  
4 nor is it a requirement of the GMA. Therefore, the Board does not have jurisdiction to  
5 decide whether the public participation process for the adoption of the principles/values  
6 statement complied with RCW 36.70A.140, RCW 36.70A.035, and related statutes.  
7

8 **Conclusion:** The principles/values statement is not an amendment to the CP and a  
9 requirement of the GMA. The Board has no jurisdiction over the adoption of the principles/  
10 values statement pursuant to RCW 36.70A.280(1).  
11

12  
13 C. Failure to Properly Provide Public Notice of Work Session and Public Hearing

14 • Work Session

15 Petitioners contend that the failure of the County to announce its November 29, 2005 work  
16 session on the County's Draft Urban Growth Area's discussion map resulted in Petitioners  
17 having only four days to draft comments, due to the Thanksgiving holiday. CCC 40.510.040  
18 B, the County's notice requirements for amending CPs, does not mention requirements for  
19 work sessions. Petitioners do not cite to any part of Clark County's code which would  
20 demonstrate the November 29, 2005 work session's notice was, in fact required, or in  
21 violation. The work session notice does not specify if public testimony was allowed at the  
22 session but does note written public comments on the map would be allowed with no  
23 announced cut-off date.<sup>48</sup> Since the discussion of the proposed expansion of the UGA went  
24 on for almost two years after this work session, and the process included many workshops,  
25 an environmental review process, and several public hearings,<sup>49</sup> giving four actual working  
26 days notice of this work session was not fatal to Petitioners' ability to participate in the  
27 process.  
28  
29

30  
31 <sup>47</sup> Exhibits 6372, 6606 at 378, Exhibit 6605 Matrix

32 <sup>48</sup> Notice attached to Exhibit 5350.

<sup>49</sup> See footnote 117.

1           • Public Hearing

2  
3 Petitioners allege the County released the BOCC's June 27 Map Preliminary  
4 Recommendations just three days prior to the July 5, 2007 public hearing. According to  
5 Petitioners, this is a violation of CCC 40.510.040D which requires a copy of a staff report be  
6 released 15 days prior to the first public hearing and mailed to interested parties. The  
7 Board would consider this a serious violation if no subsequent public hearings had been  
8 held. However, the index shows that four subsequent public hearings were held before the  
9 County adopted the revised CP.<sup>50</sup>

10  
11 While the specific provisions of CCC 40.510.040D were violated, the Board finds in light of  
12 the entire record, this failure to release the BOCC's Preliminary Recommendations within  
13 the required time is not a clearly erroneous violation of the GMA's public participation  
14 requirements.

15  
16  
17           D. Allowing Only Proponents of UGAs to Address the Commissioners at a Public  
18 Meeting

19 Petitioners maintain that inviting only those who had requests to expand the UGA violates  
20 the GMA public participation requirements. The County concedes that only persons  
21 requesting additions to the UGA were allowed to speak at the noted meeting, but notes  
22 Petitioners had many opportunities to participate.

23  
24 The Board understands how Petitioners might believe that asking only persons interested in  
25 expanding the UGAs to address the Board on a meeting set for just that purpose lends an  
26 aura of unfairness to the process. Even so, this meeting was held early in the process, July  
27 2005,<sup>51</sup> written comments were allowed, and many more opportunities to critique these

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31 <sup>50</sup> Subsequent public hearings were held on August 14, August 28, September 11, and September 25, 2007  
32 before the revised CP was adopted. Index numbers 6423, 6485, 6494, and 6506. It appears adequate  
notice of these hearings was given (Index numbers 6355, 6480, 6492).

<sup>51</sup> Exhibit 6753

1 proposals followed.<sup>52</sup> While the Board does not condone public meetings that do not permit  
2 all interested citizens equal opportunities, in light of the entire record, the Board does not  
3 agree that the Petitioners were “frozen out of the process”.

4  
5 **Conclusion:** Clark County’s public process was not without irregularities, including not  
6 following its own code provisions or, on occasion, not appearing to be even handed to all  
7 groups. However, the record shows ample opportunities to observe the process, to  
8 participate, to be informed, and to comment. In light of the entire record, the Boards finds  
9 that the public process for the adoption of the County’s revised CP was not a clearly  
10 erroneous violation of RCW 36.70A.140, RCW 36.70A.130(2), RCW 36.70A.035, or RCW  
11 36.70A.070.  
12

13  
14 **Issue: In the adoption of Ordinance 2007-09-13:**

15 ***Did Clark County violate RCW 36.70A.020(8), 36.70A.050(3), 36.70A.070, (1), (3),***  
16 ***and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating***  
17 ***agricultural land in violation of RCW 36.70A.170, in violation of RCW***  
18 ***36.70A.050(3) and WAC 365-190-050, and in violation of the County’s own***  
19 ***criteria for designating agricultural land contained within the comprehensive***  
20 ***plan and the GMA’s requirements for internal consistency in RCW 36.70A.070?***

21 **Positions of the Parties**

22 A. GMA Framework for Designation of Agricultural Lands of Long-term Commercial  
23 Significance

24 **Petitioners’ Position**

25 Petitioners maintain that agricultural lands of long-term commercial significance (LTCS)  
26 must be conserved and excluded from UGAs. Petitioners note the Supreme Court’s  
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32 <sup>52</sup> Index to the Record at Index numbers 5434, 5495,6614, 5730, 5731, 5757, 5758, 5770, 5895, 5772, 6094,  
6368, 6367, 6277, 6278, 6390, and 6291, and the public hearings mentioned above.

1 holding in *Lewis County v. Western Washington Growth Management Hearings Board*<sup>53</sup>  
2 which identified a three-part test for designating LTCS agricultural lands.<sup>54</sup>

3  
4 Petitioners contend that Clark County previously designated these lands in accordance with  
5 the GMA and the de-designated lands still meet the test set out by the Court. Petitioners  
6 allege the only reason Clark County has de-designated these previously designated  
7 agricultural lands is that they wanted to expand their UGAs, and the County had promised  
8 to look at UGA expansion to settle challenges to the 2004 comprehensive plan by property  
9 owners and the City of Battle Ground. Petitioners assert that these lands are not  
10 characterized by urban growth, are used or are capable of being used for agriculture  
11 according to soil classification, and are adjacent to other LTCS agricultural lands.<sup>55</sup>

12  
13  
14 Petitioners acknowledge that local governments are directed to consult the Washington  
15 Administrative Code (WAC) at WAC 365-190-050 (WAC factors) in determining whether  
16 land has long-term commercial significance for agricultural production and, in their  
17 Prehearing Brief, Petitioners provide a general analysis based on the WAC factors for the  
18 de-designated agricultural lands. Petitioners reach the following conclusions:

- 19 ○ Availability of public facilities - Only three areas, consisting of 768 acres, have  
20 sewer lines within 300 feet and then, only at the area boundary.
- 21 ○ Tax status - 60% of the lands are in agricultural/farm current use tax status.
- 22 ○ Availability of public services - Four of the 19 areas have nearby public  
23 facilities, several are near an airport. There is no analysis as to the availability  
24 of police, fire, or other urban level services.  
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31 <sup>53</sup> *Lewis County v Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 501; 139  
P.3d1096, 1103 (2006)

32 <sup>54</sup> Petitioners' Prehearing Brief at 13 and 14.

<sup>55</sup> *Ibid* at 14.

- 1           ○ Relationship or proximity to UGAs - The additions to the Camas and La Center  
2           UGAs add lands that are either not adjacent or are far from the urban growth  
3           boundary.
- 4           ○ Predominant parcel size - After an analysis of the average parcel sizes for the  
5           farms in Clark County, based on the 2002 Census for Agriculture, all the areas  
6           maintain parcel sizes that are consistent with the range of the parcel sizes of  
7           farms in Clark County.
- 8           ○ Land uses settlement patterns and their compatibility with agricultural  
9           practices and intensity of nearby land uses – The areas are characterized by  
10          rural and agricultural uses, with the most intense use being an occasional  
11          residential development in several areas.
- 12          ○ History of land development permits issued nearby – With the exception of two  
13          areas, no urban development permits have been issue within the vicinity of the  
14          areas. Permits issued included one for a water reservoir and another for a  
15          150-unit condominium development within the adjacent UGA.
- 16          ○ Land values under alternative uses – Petitioners recognize that land values  
17          are generally higher under urban rather than agricultural use.
- 18          ○ Proximity to markets – All the parcels are in agricultural areas close to roads  
19          and rail transportation, making these parcels ideally situated to market a wide  
20          variety of products.<sup>56</sup>

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24  
25   Regarding their conclusion concerning predominant parcel size, Petitioners cite the  
26   Supreme Court’s holding in *City of Redmond v. Central Puget Sound Growth Management*  
27   *Hearings Board (Benaroya I)*, which found that “land is devoted to agricultural use under  
28   RCW 36.70A.030 if it is in an areas where land is actually used or capable of being used for  
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32  

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<sup>56</sup> Ibid at 16 – 20.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 25 of 87

1 agricultural production".<sup>57</sup> Petitioners contend this argues against a parcel by parcel  
2 approach and if parcels are located in an area of productive land, they must remain  
3 agricultural.<sup>58</sup>

4  
5 Regarding their conclusion on land values under alternative uses, Petitioners point again to  
6 *Benaroya* which noted that uses other than agriculture will always be more profitable and  
7 this alone does not justify the loss of agriculture land.<sup>59</sup> Petitioners claim numerous other  
8 parcels could have been included in the expanded UGAs without converting agricultural  
9 land and land prices should not be the steering factor in the UGA expansion decision.<sup>60</sup>

10  
11 Petitioners claim that Clark County, in Ordinance 2007-09-13, did not provide careful  
12 analysis of how it applied the factors in WAC 365-109-050 and the definition of agriculture in  
13 RCW 36.70A.030. Petitioners also challenge what they term "impermissible factors" which  
14 included "lack of agricultural production," "unique economic development opportunities," and  
15 diversifying economies or school district tax bases. Petitioners also assert that these factors  
16 are not included in Clark County's agricultural lands designation criteria.<sup>61</sup>

17  
18  
19 Petitioners also assert that the County's analysis of the soils criterion is unclear. Petitioners  
20 declare that the CP references USDA Soil Conservation Service (USDA/SCS) land  
21 capability classification classes 1 through 8 as soil classes that must be protected. Also,  
22 Petitioners allege that the CP states the County mapped prime and unique soils. However,  
23 Petitioners contend the County's analysis does not address USDA/SCS land capability  
24 classification classes 1 through 8, so the de-designations are inconsistent with the CP.<sup>62</sup>

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29 <sup>57</sup> *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.3d.38, 53,959 p2d  
1091, 1097

30 <sup>58</sup> Petitioner's Prehearing Brief at 19

31 <sup>59</sup> *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d at 52.

32 <sup>60</sup> Petitioners' Prehearing Brief at 20.

<sup>61</sup> *Ibid* at 21.

<sup>62</sup> *Ibid* at 22.

1 Petitioners argue the County violates the GMA by adding land that is neither characterized  
2 by urban growth nor adjacent to land characterized by urban growth. Petitioners affirm that  
3 parcel sizes in this area are between 5.62 and 58.03 acres and have scattered residential  
4 dwellings. Aerial photos, Petitioners maintain, demonstrate these lands are not  
5 characterized by urban growth. Petitioners further assert that according to the 2002 Census  
6 of Agriculture, County had 70,694 acres in farms, or 17 % of the county's land area. Prior  
7 to the challenged action, Petitioners notes the County had 81, 034 acres in UGAs, or 19%  
8 of County land. Therefore Petitioners concludes that 26 % of the County's land is not  
9 designated as agricultural land, forest land, or UGA and, thus is available for UGA  
10 expansion so as to direct growth away from agricultural lands as the GMA directs.  
11 Petitioners claim the County creates irregular patterns for UGA expansion and ignores  
12 Rural and Urban Reserve lands and points to rural land adjacent to La Center for potential  
13 UGA expansion and the Urban Reserve and rural lands near Washougal.<sup>63</sup>  
14 Petitioners assert that four of the six UGA expansions create peninsulas of urban growth  
15 into predominately rural and agricultural areas creating conflicts for agricultural lands.  
16 Petitioners conclude that expansions into agricultural areas spell the doom for the County's  
17 agricultural lands and could be avoided as alternative locations exist for these expansions.<sup>64</sup>  
18  
19  
20

## 21 **County's Response**

### 22 *Court Cases and Board decision*

23 The County cites Supreme Court and Court of Appeals decisions, and a decision of this  
24 Board to support its position. The County, citing to *Manke v. Mason County*,<sup>65</sup> maintains  
25 that it has broad discretion in tailoring agricultural lands to local circumstances.<sup>66</sup>  
26  
27  
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29

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30 <sup>63</sup> *Ibid* at 25 and 26.

31 <sup>64</sup> *Ibid* at 26 and 27.

32 <sup>65</sup> *Manke v. Mason County*, 91 Wn.App. 793, 807-809; 959 P.2d 1173 (1998), review denied, 137 Wn.2d1018(1999)(case dealt with the designation of forest lands).

<sup>66</sup> Clark County General Prehearing at 13.

1 The County states the Supreme Court also stressed local discretion. , The County, using a  
2 different emphasis than Petitioners, asserts the Court in *Benroya I*<sup>67</sup> held that while the  
3 land use on a particular parcel and land owner intended use of land can be considered  
4 along with other factors in determining agricultural lands long-term commercial significance,  
5 these two factors are not conclusive on a particular parcel.<sup>68</sup> , The County declares that in  
6 *Benroya II* the Court rejected limitations on local discretion by holding that “ Nothing in the  
7 GMA suggests a city must present ‘specific and rigorous evidence’ subject to ‘heightened  
8 scrutiny’ when defending a land use designation.”<sup>69</sup>  
9

10  
11 Like Petitioners, the County cites the Supreme Court’s decision in *Lewis County*. However,  
12 the County stresses the Court’s rejection of the argument that RCW 36.70A. 030 (the  
13 definition of long-term commercial significance) and WAC 365-190 -050 (the WAC factors)  
14 limits County discretion by “enshrining the primacy of soil characteristics over ‘development  
15 related’ considerations”.<sup>70</sup>  
16

17 The County references *City of Arlington v. Central Puget Sound Growth Management*  
18 *Hearings Board*<sup>71</sup> as emphasizing local discretion as to resource designations in the context  
19 of establishing urban growth boundaries. Here the County maintains the Court made  
20 several important conclusions: (1) regarding the WAC factors, the Court held that the land  
21 owner’s intent cannot control; the County can take into account the lack of commercial  
22 farming and it can consider the owners views and experience; (2) regarding locational  
23 factors in RCW 36.70A.110(1), the Court upheld the County’s decision that the County’s  
24 access to utilities and interchange location connected the Arlington UGA to unique  
25  
26

27  
28 <sup>67</sup> *City of Redmond v. Central Puget Sound Hearings Board*, 136 Wn.2d 38, 53; 959 Wn.2d 1091 (1998)  
29 (Benroya I)

30 <sup>68</sup> Clark County General Prehearing at 14

31 <sup>69</sup> *Ibid* at 14 quoting *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 116,  
32 Wn.App.48,65 P.3d 337(2003).

<sup>70</sup> *Ibid* at 15.

<sup>71</sup> *City of Arlington v. Central Puget Sound Growth Management Hearings Board*,138 Wn.App. 1, 154 P.3d 936  
(2007).

1 commercial opportunities and was located in relationship to area characterized by urban  
2 growth; (3) the Court adopted the dictionary definition of “adjacent”, rejecting the Board’s  
3 emphasis on geography and topography and (4) the Court rejected the concept that a  
4 county must show a change in circumstances to justify re-designation.<sup>72</sup>  
5

6 The County also points to this Board’s decision in *Futurewise v. Skagit County* where it says  
7 the Board recognized the additional discretion the GMA gives County when balancing the  
8 Act’s goals when including the inclusion of agricultural lands within urban boundaries.<sup>73</sup>  
9

10 *Consideration of GMA’s Goals and Requirements and WAC Factors*

11 The County relies on three parts of its record to support its decision in its de-designation of  
12 agricultural lands and their addition to its UGAs: the Globalwise Report, Staff Issue Paper  
13 #7(Agricultural Lands), and the Board of County Commissioners deliberations.  
14

15 The County characterizes the “Analysis of the Agricultural Economic Trends and Conditions  
16 in Clark County, Washington,” (Report) prepared by Globalwise Inc., an agricultural  
17 economic consulting company, as background information and objective data as it relates to  
18 the UGA expansion areas. The County describes how the Report documents the history of  
19 agriculture in Clark County as being vibrant throughout most of the twentieth century, but  
20 shows how it has been on a steady decline over the last 30 years and now accounts for only  
21 one percent of the County’s employment and less the 0.5% of the County’s economy. The  
22 Report identifies only 145 farms on 3,115 acres in the County that are actively engaged in  
23 the commercial production and sale of agricultural products, of which, the County contends,  
24 37 are in already designated UGAs. The County asserts that the UGA expansions add 14  
25  
26  
27  
28  
29  
30

31 <sup>72</sup> County General Prehearing, at 16 and 17.

32 <sup>73</sup> *Futurewise v. Skagit County*, WWGMHB 05-2-0012c (Compliance Order/Final Decision and Order, April 5, 2007).

1 farms, consisting of 594 acres, to its UGAs. Of the 4, 352 acres being proposed for addition  
2 to the UGAs, the Report says that 40% of the land added was in non-agricultural uses.<sup>74</sup>

3  
4 The County affirms that the Staff Matrix attached to Exhibit 6605 contains exhaustive  
5 information addressing all three prongs of the statutory and the WAC factors applicable to  
6 designation of agricultural lands. The County says the ten WAC factors are each separately  
7 reviewed in the Matrix. The County explains the criteria are not mathematical or outcome-  
8 determinative, as Petitioners suggest, but broad indicators which are to be considered by  
9 counties in the context of local circumstances.<sup>75</sup>

10  
11 The County declares that the Board of County Commissioners' (BOCC) deliberations reflect  
12 careful consideration of commercial agricultural designation criteria, as well as competing  
13 GMA goals related to accommodating urban growth. According to the County, extensive  
14 deliberations on each expansion area occurred, and the review focused on the agricultural  
15 viability matrix and competing growth needs.<sup>76</sup>

16  
17  
18 The County disputes Petitioners' contention that it used impermissible factors. Regarding  
19 the Petitioners' argument that the County's soil analysis failed to address relevant  
20 USDA/SCS land capability classifications, the County avers the CP's Rural and Natural  
21 Resources Element has a map for USDA/SCS soil classifications. Also, the County denies  
22 that its CP says that all soil classifications should be protected, and asserts that its analysis  
23 focused on Class I, II, and III soils, the same soil classifications that were used in the 1994  
24 designations. Regarding the consideration of lack of commercial agricultural production in  
25 the Battle Ground area, the County argues that while this is not a determinative factor, it is a  
26 factor that can be considered. In regard to Petitioners' argument that unique development  
27 opportunities and assuring adequate tax base cannot be considered, the County contends  
28  
29

30  
31 <sup>74</sup> County's General Prehearing Brief at 19 and 20.

32 <sup>75</sup> Clark County's General Prehearing Brief at 20, 21.

<sup>76</sup> *Ibid* at 21.

1 these are appropriate considerations when considering proximity to population areas and  
2 the possibility of more intense uses and, are also relevant factors in balancing the urban  
3 growth goals of the GMA.<sup>77</sup>

#### 5 *Urban Growth Locational Factors*

6 The County answers Petitioners' contention that it violated RCW 36.70A.110's requirement  
7 that areas characterized by urban growth must be included in the UGA before lands that  
8 lack urban characteristics. The County says almost two thirds of the UGA expansions came  
9 from non-resource lands and extenuating circumstances, like subdivision covenants, caused  
10 it not to take others. The County argues that the definition of urban growth in RCW  
11 36.70A.030(17), gives them discretion when adding land not characterized by urban  
12 growth.<sup>78</sup>

13  
14  
15 The County responds to Petitioners' allegation that it created peninsulas of urban  
16 designation into and conflicting with uses in surrounding agricultural land. The County  
17 characterizes these not as peninsulas but as isolated islands of agriculturally designated  
18 properties that were included in UGA expansions.<sup>79</sup> The Board will discuss challenges to  
19 individual expansion areas below.  
20

#### 21 **Intervenors' Responses**

22 Intervenors responded to these general arguments with many of the same arguments put  
23 forth by the County, or adopted the County's responses. Their responses concerning  
24 specific expansion areas will be discussed below. Intervenors generally assert that the  
25 factors listed by WAC 365-190-050 are not exclusive, and the County can consider other  
26 factors.  
27  
28

#### 29 **Petitioners' Reply**

30  
31 <sup>77</sup> *Ibid* at 22 and 23.

32 <sup>78</sup> *Ibid* at 24.

<sup>79</sup> *Ibid*.

1 Petitioners counter County and Intervenors' arguments that "economic desire may trump  
2 agricultural designation," finding it unsupported by *Arlington*. According to Petitioners,  
3 *Arlington* holds that economic factors must be constrained by guidance sent out in the WAC  
4 and adopted by the County. Petitioners argue that the County is claiming they used the  
5 WAC factors for guidance, went through a lengthy analysis for each parcel, but then  
6 disregarded the work because the County believes the particular parcels are better for  
7 shopping or industry.<sup>80</sup>

9  
10 Petitioners disagree that the presence of critical areas is a reason for de-designation.  
11 Petitioners argue that the presence of critical areas is a reason not to add land to UGAs.  
12 Petitioners contend that critical areas are exempt from critical area protection, and although  
13 they cannot be constructed upon, they can be farmed.<sup>81</sup>

14  
15 Petitioners dispute the County's and Intervenors' assertion that lack of the presence of  
16 commercial agriculture in an area shows that long-term commercial agriculture is not viable  
17 in that area. Rather they assert it could also be an indication of the property owner's desire  
18 to be included in the UGA and opportunities of higher intensity development. The Board will  
19 address Petitioners' arguments regarding specific areas below.  
20

## 21 **Board Discussion**

### 22 A. Legislative Mandate and Court Decisions

#### 23 1. *Agricultural Conservation's Role in Managing Growth*

24 Petitioners argue that the County's de-designation of over 4,000 acres of previously  
25 designated LTCS agricultural lands violate the GMA's goals and requirements for  
26 conserving LTCS agricultural lands and the parameters sent out by the courts. Petitioners  
27 cite *Benaroya I* for establishing the role of agricultural lands in the GMA's framework for  
28 managing growth. Both Petitioners and the County cite the three-prong test set out in the  
29  
30

31  
32 <sup>80</sup> Petitioners Reply Brief at 14,15.

<sup>81</sup> Ibid at 15.

1 Supreme Court's decision in *Lewis County* as the guidance to be followed for designating  
2 agricultural lands. Petitioners contend the County did not adequately address the factors  
3 laid out by the Court, while the County and Intervenors maintain its Record shows  
4 appropriate analysis and the County's decision is well within the discretion afforded it by the  
5 GMA.  
6

7 There is no doubt that the GMA sees agricultural lands and the industry that relies on them  
8 as something special given the duty set forth to *designate* agricultural land and *conserve*  
9 such land in order to *maintain* and *enhance* the agricultural industry. The purpose of this  
10 legislative mandate was articulated by the Supreme Court a decade ago when it held:  
11

12         The GMA sought to control and regulate growth, and specifically emphasized  
13         the protection of natural resource lands, including agricultural land. The  
14         Legislature hoped to preserve agricultural land near our urban centers so that  
15         freshly grown food would be readily available to urban residents and the next  
16         generation could see food production and be disabused of the notion that food  
17         grows on supermarket shelves.<sup>82</sup>

18 The pressure to convert these lands, especially in areas impacted by population growth and  
19 development, is even more prevalent today. The Board recognizes that the counties and  
20 cities of Washington face a multitude of difficult and demanding challenges when  
21 determining how their communities will grow. But, these challenges must be addressed  
22 within the mandates of the GMA so as to serve the "public's interest in the conservation and  
23 the wise use of our lands."<sup>83</sup> Washington's limited, irreplaceable agricultural lands are at  
24 the forefront of this mandate, with cities and counties discretionary planning choices  
25 confined so as to prevent the further demise of the State's ability to provide food for its  
26 citizens.  
27  
28  
29  
30  
31

32 <sup>82</sup> *Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn. 2d 38, 57-58 (1998).

<sup>83</sup> RCW 36.70A.010  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 33 of 87

1 The GMA, through RCW 36.70A.020(8), .060, and .170, direct counties and cities to protect  
2 agricultural lands by:

- 3 1. *Designating* agricultural lands of long-term commercial significance;
- 4 2. Assuring the *conservation* of agricultural land;
- 5 3. Assuring that the use of adjacent lands *does not interfere* with their continued use for  
6 agricultural purposes;
- 7 4. Conserving agricultural land in order to *maintain and enhance* the agricultural  
8 industry; and
- 9 5. *Discouraging* incompatible uses.<sup>84</sup>

10 The question of the meaning of agricultural lands, under the GMA, was recently clarified by  
11 the Supreme Court in the *Lewis County* decision.<sup>85</sup> In that case, the proper definition of  
12 agricultural land was set forth with the Court holding:

13 We hold that agricultural land is land:

- 14 a. not already characterized by urban growth
- 15 b. that is primarily devoted to the commercial production of agricultural products  
16 enumerated in RCW 36.70A.030(2), including land in areas used or capable of  
17 being used for production based on land characteristics, *and*
- 18 c. that has long-term commercial significance for agricultural production, as  
19 indicated by soil, growing capacity, productivity, and whether it is near  
20 population areas or vulnerable to more intense uses.<sup>86</sup>

21  
22 This definition emphasizes the three required elements of agricultural lands – that it is not  
23 already characterized by urban growth, that it is *primarily devoted to* agricultural production,  
24 and has *long-term commercial significance for* agricultural production.  
25

26 The meaning of *primarily devoted to* has been addressed by the Supreme Court, with the  
27 phrase denoting that the land “is in an area where the land is *actually used or capable of*  
28

29  
30  
31 <sup>84</sup> *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 588 (2000).

32 <sup>85</sup> *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488 (2006).

<sup>86</sup> *Lewis County*, 157 Wn.2d at 502.

1 *being used for agricultural production*".<sup>87</sup> The focus is on the general characteristics of the  
2 property itself and whether it can be used for any of the types of agriculture enumerated in  
3 RCW 36.70A.030(2). The Board notes that soils play a significant role in determining  
4 whether land is capable for agricultural use, however it is not the exclusive method since  
5 some types of agriculture are not soil dependent. The question is simply – *Is this site or*  
6 *could this site be used for the grazing of cattle? For the cultivation of corn? For the raising*  
7 *of chickens?* The Board further notes that "capable" does not equate to the economics of  
8 the property<sup>88</sup> – that is for the next element which addresses the viability of the site for long-  
9 term commercial value.  
10

11  
12 The GMA's definition of *long-term commercial significance* seeks to address the economic  
13 viability of the property. This requires an assessment of five different factors, three  
14 generally related to the capability of its soils and two based on development-related impacts  
15 from the surrounding area.<sup>89</sup> When considering growing capacity, productivity, and soil  
16 composition, the focus is on the land itself and jurisdictions must use the USDA soil  
17 classification system which incorporates these three considerations.<sup>90</sup> If the property  
18 contains a soil type the USDA has determined suitable for agricultural production, then it  
19 qualifies for *potential* treatment as land with long-term commercial significance, *subject to*  
20 the considerations of development-related impacts. Although the presence of agricultural  
21  
22

23  
24 <sup>87</sup> *Redmond*, 136 Wn.2d at 53 (emphasis added) holding:

25 [I]f current use were a criterion, GMA comprehensive plans would not be plans at all, but mere  
26 inventories of current land use. The GMA goal of maintaining and enhancing natural resource lands  
27 would have not force; it would be subordinate to each individual landowner's current use of the land ...  
28 [I]f landowner intent were the controlling factor, local jurisdictions would be powerless to preserve  
29 natural resource lands. Presumably, in the case of agricultural land, it will always be financially more  
lucrative to develop such land for uses more intense than agriculture ... [I]f the designation of such  
land as agricultural depends on the intent of the landowner as to how he or she wishes to use it, the  
GMA is powerless to prevent the loss or natural resource land.

30 <sup>88</sup> See also *Lewis County*, 157 Wn.2d at 500.

31 <sup>88</sup> See *Redmond*, 136 Wn.2d at 53 (Neither current use nor a landowner's intent is conclusive in regard to  
primarily devoted)

32 <sup>89</sup> RCW 36.70A.030(10)(b) lists these factors as growing capacity, productivity, soil composition, proximity to  
population areas, and the possibility of more intense uses of the land.

<sup>90</sup> WAC 365-190-050(1)

1 soils weighs heavily on the designation of agricultural land, soils alone do not mandate  
2 designation; the GMA requires an analysis of more than just soils to identify and designate  
3 agricultural lands.

4  
5 When evaluating the proximity of the property to population areas as well as its vulnerability  
6 to more intensive uses – counties and cities may consider the development-related factors  
7 enumerated in WAC 365-190-050(1).<sup>91</sup> These factors consider not only the availability of  
8 public facilities and services but the intensity of neighboring land uses, some of which may  
9 be incompatible with agricultural uses. The GMA does not assign or dictate the weight of  
10 each factor and, therefore, a jurisdiction has discretion regarding how to apply them.<sup>92</sup> In  
11 contrast to the analysis of capacity, productivity, and soils, the focus of these factors is on  
12 the development prospects of the site and, as the Supreme Court found in *Lewis County*,  
13 may potentially pertain to factors not specifically enumerated RCW 36.70A.030(10),  
14 including the economic needs of the agricultural industry for the county as a whole, so long  
15 as these considerations are within the mandates of the GMA and pertain to the  
16 characteristics of the agricultural land to be evaluated.<sup>93</sup>  
17  
18

## 19 2. *Agricultural Goal's Relationship to the Economic Development Goal*

20 In light of the GMA's mandate to conserve, maintain, and enhance those farmlands with  
21 long-term commercial significance and using decisions of the Courts and the Boards to  
22 evaluate Petitioners' challenges, the Board will first examine the County's argument that  
23 since the County has discretion to balance GMA goals (Goal 5 – economic development  
24 and Goal 8- natural resource industries) and that no goal has primacy over another, the  
25 County's goals for economic development could be balanced with the agricultural  
26  
27

---

28 <sup>91</sup> *Lewis County*, 157 Wn.2d at 502; see also *Redmond*, 136 Wn.2d at 55.

29 <sup>92</sup> *Id.* at 502-503.

30 <sup>93</sup> *Lewis County*, 157 Wn.2d at 502-503 (Finding that it was not clearly erroneous for the County to weigh the  
31 farm industry's anticipated land needs above all else, noting that if the industry cannot use the land then the  
32 possibility of more intense uses of the land is heightened); *Id.* at 505 (Holding that the farmer's non-farm  
economic needs are not a logical or permissible consideration because it does not relate to a characteristic of  
farmland to be evaluated in determining long-term commercial significance).

1 conservation goal (Goal 8). The Supreme Court examined a similar situation in *King County*  
2 *v. Central Puget Sound Growth Management Hearings Board*<sup>94</sup> when discussing the  
3 balance between the agricultural conservation goal and Goal 9, the open space and  
4 recreation goal. The Court noted the GMA included requirements in RCW 36.70A.170 to  
5 designate agricultural lands and in RCW 36.70A.060 to adopt development regulations to  
6 conserve them. The Court also found:  
7

8 The GMA's plain language and ordinary meanings are critical to interpreting these  
9 provisions. Contrast the requirements that counties and cities *identify* lands useful for  
10 recreation and *encourage* the development of recreational opportunities with the  
11 requirements that local governments *designate* agricultural land and *conserve* such  
12 land in order to *maintain* and *enhance* the agricultural industry. Although the planning  
13 goals are not listed in any priority order in the Act, the verbs of the agricultural  
14 provisions mandate specific, direct action. The County has a duty to designate and  
15 conserve agricultural lands to assure the maintenance and enhancement of the  
16 agricultural industry.<sup>95</sup>

17 The verbs in the economic development goal are similar to that of the recreational goal:

18 *Encourage* economic development throughout the state that is consistent with  
19 adopted comprehensive plans, promote economic opportunity for all citizens of this  
20 state, especially for unemployed and for disadvantaged persons, promote the  
21 retention and expansion of existing businesses and recruitment of new businesses,  
22 *recognize* regional differences impacting economic development opportunities, and  
23 *encourage* growth in areas experiencing insufficient economic growth, all within the  
24 capacities of the state's natural resources, public services, and public facilities.  
25 (Emphasis added).<sup>96</sup>

26 Neither the economic development goal nor the recreational goal direct action as the  
27 agricultural conservation goal does. Nor does the economic development goal have any  
28 corresponding requirements. Also, the economic development goal stresses that growth  
29 should be encourage in areas “experiencing insufficient economic development growth, *all*  
30 *within the capacities of the state’s natural resources, public services, and public facilities.*”

31 <sup>94</sup> *King County v. CPSGMHB*, 142 Wn.2d 543; 14 P.3d 133 (2000).

32 <sup>95</sup> *King County*, 142 Wn.2d at 558.

<sup>96</sup> *Ibid.*

1 Therefore, in using its discretion to balance the agricultural and economic development  
2 goals, the County's economic development goals cannot outweigh "the duty to designate  
3 and conserve agricultural lands to assure the maintenance and enhancement of the  
4 agricultural industry".<sup>97</sup>.

### 6 3. WAC Factors

7 As noted above, when evaluating the proximity of the property to population areas as well  
8 as its vulnerability to more intensive uses – counties and cities may consider the  
9 development-related factors enumerated in WAC 365-190-050(1). The County evaluated  
10 the WAC Factors as well as some other factors. The Courts and the Boards have given  
11 direction on the use of the WAC factors that the Board will consider when evaluating  
12 Petitioners' challenge to the County's designation of agricultural land.  
13

14 Proximity to urban areas. In the *Redmond* case, the Court interpreted the Legislature's  
15 intent that agricultural lands near population centers need to be preserved "so that freshly  
16 grown food would be readily available to urban residents."<sup>98</sup> Contrary to what was argued  
17 by the County and Intervenors at the hearing, adjacency to urban growth areas does not  
18 automatically mean the designated agricultural land is *suitable* for de-designation as the  
19 urban growth boundary advances to accommodate increased population. While proximity to  
20 urban areas is certainly a factor to be considered along with others lands, the Board reads  
21 the Court's interpretation of legislative intent to mean that adjacency to UGAs was not a  
22 deciding factor in determining the long-term commercial significance of agricultural land.  
23  
24

25  
26 Similarly, the Eastern Washington Growth Management Hearings found, when evaluating  
27 the designation of Kittitas County's LTCS forest lands, that proximity to urban areas was not  
28 a determinative factor in the designation of forest lands:  
29  
30

31  
32 <sup>97</sup> Ibid.

<sup>98</sup> *Redmond*, 136 Wn.2d at 58.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 38 of 87

1 Clearly, if qualifying forest land is not proximate to population areas it should be  
2 designated. The reverse is not necessarily true. As noted above, forest lands of  
3 long-term commercial significance may, under limited conditions, be inside urban  
4 growth areas. The extent to which a population area impacts forest land is the  
5 determining factor. Thus, an 80 acre parcel that elsewhere in the state might be  
6 properly designated forest land, might not so qualify if it abutted the City of Seattle. It  
7 is the level of impact placed on the property, rather than its location that is  
8 determinative. It is the burden of increased management and other costs that  
9 disqualifies the property.<sup>99</sup>

10 The Board finds that this same principle applies to agricultural resource lands.

11 Also, the Globalwise Report shows that 37 farms out of the 145 farms identified as making  
12 over \$25,000 a year still exist in UGAs, which clearly demonstrates that close proximity to  
13 lands characterized by urban growth does not necessarily make agricultural land  
14 unproductive.<sup>100</sup>

15 Values Under Other Uses. As referenced in *Redmond, supra*, the Supreme Court has have  
16 held that landowner intent can be considered but it is not a determinative factor in the  
17 designation of agricultural lands. In making that finding the Court said:  
18

19 Presumably, in the case of agricultural land, it will always be financially more lucrative  
20 to develop such land for uses more intense than agriculture. Although some owners  
21 of agricultural land may wish to preserve it as such for personal reasons, most... will  
22 seek to develop their land to maximize their return. If the designation of such land as  
23 agricultural depends on the intent of the landowner as to how he or she wishes to  
24 use it, the GMA is powerless to prevent the loss of natural resource land... A stated  
25 legislative intent of the GMA is to maintain and enhance agricultural land. .. We  
26 decline to interpret the GMA definition in a way that vitiates the stated intent of the  
27 statute.<sup>101</sup>

28 Likewise, because agricultural lands will almost always be more lucrative to develop as  
29 other uses, allowing the value of land under other uses to be the controlling factor, would  
30 also prevent the accomplishment of the stated intent of the statute. Just as with proximity to

31 <sup>99</sup> *Ridge v. Kittitas County*, EWGMHB 94-2-0017 (Final Decision and Order, July 28, 1994).

32 <sup>100</sup> Exhibit 6548.

<sup>101</sup> *Redmond v. CPGSMHB*, 136 Wn.2d 38; 959 P.2d 1091 (1998)

1 urban areas, the value of land under alternative uses can be *considered* according to WAC  
2 365-195-050 (1)(c) but it cannot be the controlling factor. In fact, almost all of the lands that  
3 Clark County considered could be targeted for de-designated based on this factor alone.<sup>102</sup>  
4

5 The availability of public facilities. The County's Matrix that shows the nearness of schools,  
6 airports, and the access to certain roads was used to help determine whether the land was  
7 vulnerable to the possibility of more intense use. However, it is not clear whether the  
8 County believes a school's or an airport's proximity to a LTCS significant area interferes  
9 agricultural use or opens up the area up to more intense use. RCW 36.70A.030(12)  
10 provides: "public facilities" include "streets, roads, highways, sidewalks, street and road  
11 lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems,  
12 parks and recreational facilities, and schools," RCW 36.70A.030(13) provides: "public  
13 services" include "fire protection and suppression, law enforcement, public health,  
14 education, recreation, environmental protection, and other governmental services".  
15  
16

17 The GMA's definition section goes on to distinguish the difference between *rural* public  
18 facilities and services and *urban* public facilities and services. RCW 36.70A.030 (17)  
19 distinguishes "Rural governmental services" or "rural services" "to include those public  
20 services and public facilities historically and typically delivered at an intensity usually found  
21 in rural areas, and may include domestic water systems, fire and police protection services,  
22 transportation and public transit services, and other public utilities associated with rural  
23 development and normally not associated with urban areas. Rural services do not include  
24 storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4)." RCW  
25 36.70A.020(20) defines "Urban governmental service or "urban services" "to include those  
26 public services and public facilities at an intensity historically and typically provided in cities,  
27 specifically including storm and sanitary sewer systems, domestic water systems, street  
28 cleaning services, fire and police protection services, public transit services, and other  
29  
30  
31

32 <sup>102</sup> Matrix at

1 public utilities associated with urban areas and normally not associated with rural areas.

2 The GMA distinguishes land as being urban, rural, and resource.”

3  
4 These GMA definitions recognize that the scale and intensity of services in rural lands  
5 should be less than those in urban areas. Rural services should not be of the scale and  
6 intensity that interfere with agricultural lands. Rural lands act as a buffer to agricultural lands  
7 and services in rural lands by definition do not interfere with agriculture. While schools are  
8 defined as a public facility, they are not listed as either a rural or an urban service. That is  
9 because school districts make schools available to students who live on urban, rural, and  
10 resource lands. They are not the same kind of facility as a water line or sewer line that  
11 enhances the ability of property to be developed. The availability of schools is not a factor  
12 in determining whether agricultural land should be de-designated. Further clarity as to the  
13 County’s meaning in this regard is needed as it is possible that it meant that the presence  
14 of large high schools and junior high schools adjacent to agricultural lands interferes with  
15 the productivity of agricultural lands or make the provision of urban services more likely.  
16 However, the Board does not find that the presence of schools, needed by residents of all  
17 areas alike, a determinative factor for de-designation, or should be considered to urban  
18 growth that is incompatible with resource lands.  
19  
20

21  
22 The same is true for airports, which are not listed in the GMA as an urban or rural service.  
23 Again, having an airport “available” is not a determinant for designation or de-designation.  
24 Large airports serve a wide region. Small scale public use airports are not incompatible with  
25 agricultural lands and can provide services farmers need such as crop dusting. In fact, the  
26 Washington Department of Transportation does not advise locating intense commercial or  
27 residential uses within certain distances from an airport’s runway protection zones..  
28 Agricultural lands can, in fact, can provide protection for a small-scale airport and are a  
29 compatible adjacent use in most cases..  
30  
31  
32

1 Roads are also a facility that all residents, regardless of the type of land they inhabit, need.  
2 The availability of a rural road is not a service that should cause de-designation. While  
3 closeness of urban arterials or an interstate highway, when combined with other factors,  
4 could increase the possibility of more intense development, their presence alone is not  
5 determinative factor for de-designation. In contrast, in our FDO in *Futurewise v. Skagit*  
6 *County*,<sup>103</sup> the Board found that one factor in allowing a de-designated property to be added  
7 to a UGA was the fact it was surrounded on three sides by roads help protect the adjacent  
8 farmland from further encroachment of urban uses. Likewise, Interstate 5 serves urban,  
9 rural, and agricultural land and runs through hundreds of miles of agricultural land in  
10 Washington State. If nearness to Interstate 5 was a determinative factor, then thousands of  
11 acres of agricultural land could be de-designated, seriously impacting the fulfillment of the  
12 GMA's agricultural conservation goal.  
13

#### 14 4. Non-WAC Factors

15  
16 Petitioners argue that the presence of critical areas and the adjacency to Urban Reserve  
17 Areas should not be used as factors in the de-designation of agricultural areas and they  
18 are not factors recommended for consideration under WAC 365-190-050 . The County and  
19 Intervenors argue WAC 365-190-050 does not limit the County's ability to use other factors  
20 as long as they do not conflict with the GMA. The Supreme Court in a footnote in the *Lewis*  
21 *County* decision supported this position.<sup>104</sup> The Board recognizes that factors not listed in  
22 the WAC can be used, as long as they comport with the goals and requirements of the  
23 GMA.  
24

25  
26 Critical Areas. Petitioners claim the County should not have used the presence of critical  
27 areas as a factor in de-designating agricultural lands. Petitioners assert critical areas in  
28 agricultural lands are exempt from protection, and that the County's regulations do exempts  
29  
30

31  
32 <sup>103</sup> *Futurewise v. Skagit County*, WWGMHB 05-2-0012c, Final Decision and Order/Compliance Order

<sup>104</sup>

1 them. The County says that is incorrect, critical areas in agricultural lands require protection  
2 and that the County's regulations do protect them.

3  
4 The Board agrees with the County that the GMA does not exempt critical areas in  
5 agricultural lands from protection and that the County's code does protect them. The GMA  
6 requires the protection of critical areas wherever they occur. Also, this Board has held that  
7 their occurrence does not prohibit an area's inclusion in a UGA. Likewise, their presence in  
8 agricultural lands is not necessarily a reason to de-designate. The GMA identifies five types  
9 of critical areas: wetlands, steep slopes, frequently flooded areas, geologically hazardous  
10 areas, and fish and wildlife habitat areas. Not all of critical areas make an area unsuitable  
11 for farming. While a high percentage of steep slopes and wetlands may make a certain land  
12 difficult to farm, it does not follow that an entire area is not suitable for agriculture. While  
13 protection measures create tension among the GMA agricultural and environmental  
14 protection goals, such as with fish and wildlife habitat areas, this tension does not mean that  
15 these areas cannot co-exist.  
16  
17

18  
19 The County uses the percentage of critical areas as factor to consider when de-designating  
20 a LTCS Agricultural Area. However, it does not do the same when considering whether to  
21 add it to a UGA.

22 Urban Reserve Areas. One of the factors in the County's Matrix was the adjacency of a  
23 proposed site to an Urban Reserve Area. An Urban Reserve Area is an overlay designation  
24 on land still designated as agricultural resource land. Clark County uses this overlay as a  
25 planning to tool to indicate that when the County needs more land, based on a document  
26 need, for its UGAs then this is the land that would be looked at for possible addition to the  
27 UGA. The reason this Board found that this concept compliant was that the land would  
28 have to go through the required process for de-designation, with an amendment to the CP,  
29 and the County would need to show its work for the needed the land, before it could added  
30 to the UGA. Using adjacency to land designated as Urban Reserve is definitely not a  
31  
32

1 legitimate factor to consider for de-designation and cannot be used to show a land's  
2 relationship to an urban growth area.

3 Rural Centers. A rural center is a limited area of more intensive rural development  
4 (LAMIRD). RCW 36.70A.030(5)(d) specifically states "A pattern of more intensive rural  
5 development, as provided in RCW 36.70A.070(5)(d), is not urban growth."  
6

7 RCW36.70A.070 (5)(d)(iv)(D) states,

8 A county shall adopt measures to minimize and contain the existing areas or uses of  
9 more intensive rural development, as appropriate, authorized under this  
10 subsection...The county shall establish the logical outer boundary of an area of more  
11 intensive rural development. In establishing the logical outer boundary the county  
12 shall address ... the ability to provide public facilities and public services in a manner  
13 that does not permit low-density sprawl.

14 Proximity to a LAMIRD, or as Clark County terms them – a Rural Center, does not  
15 constitute being adjacent to urban growth or services. Having services available in a Rural  
16 Center is not reason for de-designation.

17 B. Specific Areas of De-designation and UGA Expansion

18 1. Three-part Test

19 Clark County acknowledges that de-designation of LTCS agricultural lands is subject to the  
20 same process as the designation of LTCS agricultural lands and declares that it has  
21 followed an appropriate process.<sup>105</sup> In contrast, Petitioners argue that the LTCS  
22 agricultural lands de-designated by the County meet the three part test established by the  
23 Court in *Lewis County*.  
24

25 The Supreme Court in *Lewis County* put forth a three part test to determine whether  
26 counties had met the GMA goals and requirements when designating agricultural lands.  
27

28 The same test should be met when de-designating agricultural lands. This three prongs of  
29 this test as described *supra* are: (1) land not already characterized by urban growth, (2)  
30

31 \_\_\_\_\_  
32 <sup>105</sup> Clark County's General Prehearing Brief at 12.

1 land that is primarily devoted to the commercial production of agricultural products  
2 enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used  
3 for production based on land characteristics, *and* (3) land that has long-term commercial  
4 significance for agricultural production, as indicated by soil, growing capacity, productivity,  
5 and whether it is near population areas or vulnerable to more intense uses.<sup>106</sup> From our  
6 reading of the statute, lands to be de-designated need to meet all three parts of the test.  
7

8 Because the designation of LTCS agricultural land involves a specific GMA requirement,  
9 what the Supreme Court calls a mandate, Clark County must “show its work” that it has met  
10 this GMA’s requirement.<sup>107</sup> To do this, Clark County relies on its Record that includes the  
11 Report, a matrix that compared the components of the three part test, and deliberations of  
12 the BOCC. The County’s CP says that it mapped prime agricultural soils and considered  
13 the WAC factors.<sup>108</sup> Petitioners argue the County discounted some prime soils as a  
14 designation factor and while it considered the WAC factors, the County essentially “threw  
15 them out” in favor of the economic development goal when the de-designation of long-term  
16 significant agricultural lands, noting greater economic opportunity and increased tax base  
17 for cities, the county, and school districts. As the Board assesses Petitioners’ challenges,  
18 the Board recognizes the Supreme Court’s holding in *Benroya II* that “Nothing in the GMA  
19 suggests a city must present ‘specific and rigorous evidence’ subject to ‘heightened scrutiny’  
20 when defending a land use designation.”<sup>109</sup>  
21  
22

23 *a. Characterized by Urban Growth*

24 The first prong of the three part test, is “land not characterized by urban growth”. RCW  
25 36.70A.030(18) states,  
26  
27  
28  
29

30 <sup>106</sup> *Lewis County*, 157 Wn.2d at 502.

31 <sup>107</sup> See *Whatcom County*, *San Juan County*.

32 <sup>108</sup> Clark County Comprehensive Plan, Chapter 5, Natural Resource Element.

<sup>109</sup> *Ibid* at 14 quoting *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 116, Wn.App.48,65 P.3d 337(2003).

1 “Characterized by urban growth” refers to land having urban growth located on it, or  
2 to land located in relationship to an area with urban growth on it as to be appropriate  
3 for urban growth.

4 RCW 36.70A.030(18) defines urban growth as

5 ...growth that makes intensive use of land for the location of buildings, structures,  
6 and impermeable surfaces to such a degree as to be incompatible with the primary  
7 use of land for the production of food, other agricultural products, or fiber, or the  
8 extraction of mineral resources, rural uses, rural development, and natural resource  
9 lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural  
10 development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When  
11 allowed to spread over wide areas, urban growth typically requires urban  
12 governmental services....

13 The County’s Matrix describe that the areas, in and of themselves, are not characterized by  
14 urban growth. However, the County argues these areas are “land located in relationship to  
15 an area with urban growth on it as to be appropriate for urban growth.”

16 *b. Used or Capable of Being Used for Production Based on Land*  
17 *Characteristics*

18 Petitioners and the County disagree on how the test’s second prong, “land that is primarily  
19 devoted to the commercial production of agricultural products enumerated in RCW  
20 36.70A.030(2), including land in areas used or capable of being used for production based  
21 on land characteristics” if interpreted. The Board sees this prong speaking to both current  
22 use of the property as well whether the land has been used for agricultural in the past for  
23 the uses enumerated in RCW 36.70A.030(2) and whether it is capable of being used based  
24 on land characteristics based on capability of the soil.  
25

26  
27 The County uses information from the Globalwise Report<sup>110</sup> that uses information included  
28 in the 2002 Census of Agriculture and assumes that net farm income is a good indicator of  
29 what constitutes commercial agriculture, concluding that only 145 “commercial” farms still  
30 exist in Clark County that have an income of over \$25,000 annually. The Report says  
31

32  

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<sup>110</sup> See generally Exhibit 6548 for findings pertaining to farm income levels.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 46 of 87

1 “Gross sales do not provide a clear indication of business intentions, but higher level of  
2 sales does correlate with on-going business intentions.. The Report further provides the  
3 number of farms making \$25,000 or more has declined since 1987, while farms reporting  
4 less than \$2500 have increased and constitute over half the farms. However, the Report  
5 shows that farms making over \$25,000 has increased since 2002, especially those making  
6 over \$100,000 a year. The Report does not indicate why \$25,000 should be considered the  
7 threshold for commercial farming.  
8

9  
10 Petitioners point out, and the Report confirms, that farm income is a measure of owner  
11 intent. The Board agrees and recognizes that an owner of a farm that has prime soils or  
12 has been historically farmed may have a myriad of reasons for not producing a significant  
13 income. Using farm income as a measure of whether agricultural land is primarily devoted  
14 to agricultural products speaks to owner intent rather than whether the land is “used or  
15 capable of being used for production based on land characteristics”. This prong speaks to  
16 ‘land characteristics” not economic function. Farm income is not a measure that meets  
17 the second prong of the Supreme Court test. While landowner intent can be considered,  
18 according to the Supreme Court, as described *supra*, this factor is not determinative when  
19 designating agricultural land.  
20

21  
22 Petitioners focus on the “capable of being farmed” part of this prong, and say all the areas in  
23 question have prime soils according to the USDA/SCS soils classification system and  
24 therefore are “capable of being farmed.” Further, they point out that many of the farms that  
25 have a high percentage of land are enrolled in the agricultural current use program, which is  
26 evidence of the land being farmed. The Board agrees with Petitioners that land in the  
27 agricultural/farm current use tax program shows the land is currently being farmed or that  
28 having prime soils land shows it is “capable of being farmed” and therefore meets the  
29  
30  
31  
32

1 second prong of the Court’s test. The great majority of the challenged areas in question  
2 contain well more than 50% prime soils, thus are “capable of being farmed”.<sup>111</sup>

3  
4 *c. Long-term Commercial Significance*

5 The Court’s third prong pertains to land that has long-term commercial significance for  
6 agricultural production, a broad prong with many factors, as indicated by soil, growing  
7 capacity, productivity, and whether it is near population areas or vulnerable to more intense  
8 uses.<sup>112</sup> This prong involves soil type or class and use of the WAC factors, or factors  
9 adopted by the County that are consistent with the GMA’s conservation imperative. The  
10 County does not adopt any “additional” factors in its CP, but simply refers to the WAC  
11 factors as determinants of long-term commercial significance. However, in its de-  
12 designation process, the County considered not only the WAC factors but other  
13 considerations including the amount of critical areas and closeness of schools, urban  
14 reserves, and rural centers.

15  
16  
17 WAC 365-109-050 also says,

18 Counties and cities “shall consider how the combined effects of the proximity of the  
19 proximity to population areas and the possibility of more intense uses of land”. It is  
20 this combined effects of the WAC factors that determines where agricultural land has  
21 long-term commercial significance.

22  
23 The Board will examine Petitioners’ challenge to the County’s application of the three prong  
24 test below.

25  
26 *Camas (Areas CA and CB)*

27 Positions of the Parties

28 Intervenor Johnston Dairy states that it has an interest in the CB area. Johnston Dairy says  
29 that Camas can only grow north; that nine of the fifteen parcels in this subarea have not  
30

31  
32 <sup>111</sup> Matrix 1-7.

<sup>112</sup> *Lewis County*, 157 Wn.2d at 502.

1 been devoted to commercial agriculture and will not be in the future; and that most of Clark  
2 County's dairy operations have moved to Idaho, Eastern Washington, or Eastern Oregon,  
3 with this dairy facing the same issues. According to Johnston Dairy, the County found  
4 among the reasons to de-designate this area as LTCS agricultural land being: that the area  
5 has 55% critical areas; the area is partially in the Airport Environs District; the area is  
6 across Lake Lacamas from the UGA and the Camas city limits; small urban lots exist near  
7 this location (R1-15), and the dairy is part of an industry that will move to Idaho.<sup>113</sup>  
8

9  
10 Intervenor GMC Camas L.L.C. is the principal owner in Green Mountain properties also  
11 argues for the de-designation of both these subareas. GMC Camas states that in 2006,  
12 when it asked for annexation to the City of Camas, 20-25% of this property was being  
13 utilized for a golf course, 35% was in vacant forest lands, and 15% was in limited  
14 agriculture. GMC Camas counters Petitioners' argument that this subarea is not adjacent to  
15 the UGA because of separation by a lake by pointing to Olympia, a city which has areas on  
16 either side of a lake, and that in Camas's situation, utilities can easily be extended in both  
17 directions around the lake.  
18

19  
20 Petitioners reply that this area is remote, rather than adjacent to the Camas UGA because it  
21 is across a long, narrow lake, surrounded by open fields, large parcels, rural residential, and  
22 forested land. Petitioners assert that, with a couple of exceptions, this area is  
23 predominantly comprised of large parcels and prime soils, with 85% of it in ag/farm current  
24 use tax status. Petitioners recognize that land values are higher under the proposed mixed  
25 zoning, but are lower than most of the other areas proposed for inclusion in UGAs .  
26  
27 Petitioners also acknowledge that there a number of small parcels, but contend that they  
28 could be combined with large parcels and are in an area that can and does support  
29 agriculture. Petitioners argue that land values alone should not predominate in the decision  
30 to de-designate, as they will always be higher for a non-agricultural use. Petitioners  
31

32  

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<sup>113</sup> Johnston/Lagler Prehearing Brief at 4 and 5.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 49 of 87

1 contend that although the lake makes the provision of urban services and commuting  
2 difficult, the area is still close to the Vancouver, Camas, and Washougal markets.<sup>114</sup>

3  
4 **Board Discussion**

5 The Ordinances's finding in regard to the Camas area show that the reasons for de-  
6 designating these areas because of 1) proximity to urban areas; 2) the possibility of more  
7 intensive use; and 3) unique economic development activities .

8  
9 According to the Matrix, for area CA, a 342 acre site, the County discounted the existence of  
10 prime soils, concluding that most were under the golf course without acknowledging that this  
11 does not eliminate its potential use for agricultural production. However, the county map  
12 reveals that Class III soils exist in the rest of the area, listed as prime by USDA/SCS. While  
13 the Board recognizes that designation of agricultural lands cannot be based on soils alone,  
14 the BOCC decision not to consider the presence of such soils – approximately 66% of the  
15 site - makes the de-designation of CA area clearly erroneous and does not comply RCW  
16 36.70A.170 and RCW 36.70A.020(8).  
17

18  
19 In area CB, a 402-acre site, the BOCC based its decision on Intervenor Johnston Dairy's  
20 assertion that the dairy would soon be moving to Idaho, a trend laid out in the Globalwise  
21 Report. However, the matrix shows that in this area, there are four farms that generate  
22 \$25,000 or more, the area is made of 73% prime agriculture soils, and 85% of the area is in  
23 ag/current use. Johnston's operation is not the only farm in the area and the Matrix clearly  
24 shows that the land is capable of being farmed. Again, while the Board recognizes that soil  
25 type and whether the land is capable of being farmed based on the area are not the only  
26 reasons for designating LCTS agricultural land, capable land, especially land with prime  
27 soils needs to be considered. The County's other reason for de-designating this property  
28  
29  
30

31  
32 <sup>114</sup> Petitioners Reply Brief at 18, 19.

1 was that it provides an unique opportunity for Camas, due to the mill’s downsizing.<sup>115</sup> Again,  
2 de-designating agricultural land to increase the tax base of a city, does not address the  
3 needs of the agricultural industry, and ignores the conservation mandate established by the  
4 Supreme Court. The de-designation of this area for the BOCC reasons does not comply  
5 with RCW 36.70A.170(1) and RCW 36.70A.020 (8).

6 **Conclusion:** The County’s decision to de-designate the CA-1 are and the CB area was  
7 clearly erroneous and does not comply with RCW 36.70A.020(8) and 36.70A.170.  
8

9  
10 *(RB 1 –Ridgefield)*

11 **Positions of the Parties**

12 Intervenor Royle Family has an interest in this area, a 282 acre site, which it describes as  
13 “the doughnut hole” in the previous Ridgefield UGA. Royle Family summarizes the  
14 County’s evaluation of this area which shows that the area was suitable for grazing, is near  
15 public services, is not currently being farmed, and 33.5 % of the area is critical areas. As to  
16 the surrounding area, Royle Family notes the presence of a school and that the northern,  
17 eastern, and the tip of southwestern parcels are adjacent to the Ridgefield UGA. The area  
18 is also adjacent to lands zoned Urban Reserve and Urban Holding. Because this area is  
19 almost completely surrounded by the Ridgefield UGA and urban uses, Royle Family says  
20 the County concluded did not have viability for agricultural production.<sup>116</sup>  
21

22  
23 Petitioners, in response, maintain that this land contains “Gee Silt Loam” soil, which is a  
24 USDA prime soil, and “offers the best combination of physical and chemical characteristics  
25 for producing food, feed, forage, fiber, and oilseed crops.” Petitioners portray the area as  
26 having three farms, 61% prime soils, 35% critical areas unsuitable for intensive building,  
27 with no water or sewer lines, and no proposed development in the area.<sup>117</sup>  
28  
29  
30

31 <sup>115</sup> Matrix at 2.

32 <sup>116</sup> Johnston/Lagler Brief at 5 and 6.

<sup>117</sup> Petitioners’ Prehearing Brief at 20.

1 **Board Discussion**

2 The Matrix indicates that the County recognized that this area was still in active farming but,  
3 because it is surrounded on three sides by the Ridgefield UGA, this area would eventually  
4 be enclosed by urban land uses.<sup>118</sup> However, as Petitioners point out and the matrix also  
5 shows, 61% of the area has prime soils, 85 % is in current use tax program, surrounding  
6 parcels are in rural and agricultural uses, a road runs through the property but no sewer  
7 and water lines are near the area, and no urban developments have been issued in the  
8 vicinity. Here, while the area is adjacent to the UGA, it is not surrounded by land  
9 characterized by urban growth. The County matrix and BOCC deliberations also showed  
10 the recognition of the need to conserve this area for farming by requiring an adoption of  
11 transfer of development rights program before the City can annex the area. A transfer of  
12 development rights program is required when a City includes LTCS land in the City. Here,  
13 the County is de-designating land and rezoning it Urban Low Density residential. The de-  
14 designation will not conserve the land while a TDR program is being developed.  
15  
16

17  
18 **Conclusion:** The land is surrounded by the UGA.. Although it is capable of being farmed,  
19 its ability is limited by the encroaching urban areas. The de-designation of Area RB-1 was  
20 not clearly erroneous. *RB-2 ( Ridgefield).*

21 *Area RB-2*

22  
23 **Positions of the Parties**

24 Intervenor Pacific Lifestyle Homes has an interest in this subarea, a 199 acre site, in the  
25 new Ridgefield UGA. The County's findings de-designating this subarea, as described by  
26 Pacific Lifestyle Homes, include identifying only one "commercial farm" in the area, listing  
27 58% of the soils as prime soils, 66.5% as critical areas, showing a major road running  
28 through the subarea, and part of the area being adjacent to the Ridgefield UGA.<sup>119</sup>  
29  
30

31  
32 <sup>118</sup> Matrix at 4.

<sup>119</sup> Intervenor Johnston/Lagler Brief at 8.

1 Petitioners point out that this is an area of Gee Loam soils suitable for various crops.  
2 Petitioners portray this area as a 200-acre peninsula thrusting into active farmland, where  
3 only one portion of land touches the UGA and the neighboring land to the south, east, and  
4 west are in AG-20 zoning. Petitioners state that this area has no water, sewer, and is  
5 served only by a rural road. Petitioners agree with the County's assessment as to the  
6 percentage of prime soils and critical areas.<sup>120</sup>  
7

### 8 **Board Discussion**

9  
10 The County's Matrix says that the decision to de-designate this land was based on the  
11 agricultural analysis, the lack of water and sewer lines nearby, adjacency to a school site,  
12 location near a road that is being built out and environmental constraints. The matrix also  
13 indicates that 58% of land is prime agricultural soils, it is adjacent to the UGA on its  
14 southern tip, and no permits had been issued in the vicinity.<sup>121</sup> Again, while this area  
15 touches the UGA, it is not adjacent to an area characterized by urban growth and no sewer  
16 and water lines are indicated near the subarea, except what appear to be limited to an  
17 isolated subdivision.<sup>122</sup> The majority of the areas has prime soils, so is capable of being  
18 farmed as well as having 85.9% in current tax, indicating use of the land as farms, as well  
19 as one farm generating an income of \$25,000, showing the land is capable of being farmed.  
20  
21 <sup>123</sup> The presence of critical areas, a road that serves agricultural and rural areas, and a  
22 school are not criteria for de-designation, as described *supra*. No WAC factors are  
23 implicated to suggest a lack of long-term commercial significance. This area still meets the  
24 three-part test.  
25

26  
27 **Conclusion:** The de-designation of Area RB-2 does not comply with RCW  
28 36.70A.170(1)(a) and RCW 36.70A.020(8) and was clearly erroneous.  
29

30  
31 <sup>120</sup> Petitioners' Reply Brief at 20, 21.

<sup>121</sup> Matrix at 4.

<sup>122</sup> Ridgefield UGA – Map 1- Deliberation Components

<sup>123</sup> Matrix at 4.

1 *RC(Ridgefield)*

2 **Position of the Parties**

3 Intervenor Pacific Lifestyle Homes has an interest in this subarea, a 306 acre site, within the  
4 new Ridgefield UGA. Intervenor says that the County's findings from evaluating the WAC  
5 factors demonstrated that the subarea included water lines, a rural residential subdivision of  
6 3/4 to one acre lots, and only one commercial farm according to the Globalwise Report.  
7 The County's findings also included that the subarea had sewer lines nearby, was adjacent  
8 to the UGA and city limits, and most of the prime soils were underneath a clustered  
9 subdivision.<sup>124</sup>

11  
12 Petitioners depict this area as being another peninsula of de-designated land, containing  
13 one active farm. Petitioners declare that 70% land is made up of prime soils and 56.33%  
14 critical areas. One residential subdivision exists in the area and Petitioners say that the  
15 county acknowledges this development is more intense than the rest of the area, but that  
16 the area is surrounded by rural and agricultural land uses. Petitioners argue that a cluster  
17 subdivision, designed to allow additional density in rural areas, should not be the basis for  
18 de-designation on the grounds that now high intensity uses conflict with agriculture.  
19 Petitioners contend that while Class I and Class II soils were consumed by housing,  
20 Intervenor overestimate the amount of farmland eaten up by housing, and maintain that  
21 the southern end of the area contains Class III prime soils and critical areas and is  
22 untouched by housing.<sup>125</sup>

23  
24  
25 **Board Discussion**

26 The RC area is adjacent to the UGA. According to the County's matrix the rural subdivision  
27 within this area is more intense than the other rural, agricultural land, and rural residential  
28 development that surround it. The matrix also says that water lines are in the area, and  
29 sewer is at the very tip of the UGA. Although the BOCC indicated in their discussions that  
30

31  
32 <sup>124</sup> Intervenor Brief at 9 and 10.

<sup>125</sup> Petitioners' Reply Brief at 22,23.

1 no prime soils exist in the area, the matrix says that 70 % of land is prime soils, and 68.8%  
2 is in agriculture/ current use program. However the WAC factors of proximity to sewer and  
3 water and relationship to UGAs combine to make the land not viable for agricultural use.  
4

5 **Conclusion:** The de-designation of Area RC was not clearly erroneous.  
6

7 *VA and VA-2(Vancouver)*

8 Intervenor Renaissance Homes has an interest in this subarea, a 125 acre site (VA) and a  
9 23 acres site (VA-2). Renaissance Homes explains the County's findings show a subarea  
10 with a high percentage of prime soils with an Urban Reserve Overlay and surrounded by  
11 parcels with the Urban Reserve Overlay. Also, the findings disclose that no commercial  
12 farms were identified in the subarea by the Report, the area is in close proximity to the  
13 Vancouver and Battle Ground UGAs, and development in this area would be able to utilize  
14 189<sup>th</sup> Street if it was built out.<sup>126</sup>  
15

16  
17 Petitioners describe this area as VA and VA-2, and represent that it is isolated from  
18 Vancouver by significant swathe of rural and farmed land. They state that VA consists of  
19 85% prime soils and 33.55% critical areas, while VA-2 is made up of 58.98% prime soils  
20 and 33.55% critical areas. Petitioners allege that while the Report shows no active farms in  
21 these areas, significant ownership by Renaissance Homes make it likely that owner intent is  
22 the reason for lack of farming. Petitioners assert no sewer exists in this area, water is  
23 available only on the southern end, the area is surrounded by open fields, forested land,  
24 and rural residential and farm buildings, and no urban development permits have been  
25 issued in the vicinity.<sup>127</sup>  
26

27  
28 **Board Discussion**  
29  
30  
31

32 <sup>126</sup>Johnson/Lagler Prehearing Brief at 11.

<sup>127</sup> Petitioners' Reply Brief  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 55 of 87

1 The matrix details that the reasons for de-designating these areas are to utilize the build-out  
2 of 189<sup>th</sup> Street, when it occurs, the lack of existing farms on the site, and the proximity to the  
3 Vancouver UGA. Further examination of the matrix shows that the VA area is made up of  
4 85% prime soils, and prime soils comprise about 59% of VA -2. The land within the  
5 subareas and surrounding the area is comprised of rural land uses, open fields, forested  
6 land, interspersed with residential and farm buildings. About 40% of VA is in current ag/farm  
7 status, while none of VA-2 has current ag/farm current use.<sup>128</sup> The map shows a water line  
8 at the southern edge of the parcel of the VA area.<sup>129</sup>  
9

10  
11 These areas are near the UGA but are not near areas characterized by urban growth or  
12 adjacent to areas characterized by urban growth.<sup>130</sup> The Urban Reserve designation is an  
13 overlay on an agricultural resource land. The fact that VA has been part of Urban Reserve  
14 since 1994 is not that unusual. Many times in large UGAs urban growth does not occur at  
15 the edges of the UGA even within the planning period, due to less than expected growth in  
16 the area or the inability to expand or extend capital facilities. The County notes that these  
17 are areas of prime soils. Prime soil areas are areas capable of being farmed. A road  
18 serving urban, rural, and agricultural residents that has potential to be improved does not  
19 constitute a public facility that detracts from the agricultural lands resource lands long-term  
20 commercial significance nor does the presence of a water line without sewer cause the  
21 potential for more intense uses. These areas are not characterized by urban growth or  
22 adjacent to areas characterized by urban growth. The area is comprised of a majority of  
23 prime soils. An evaluation of the WAC factors do not indicate the area is vulnerable to more  
24 intense uses. The area still meets the Court's three-part test.  
25  
26  
27

28 Conclusion: Based on the foregoing, the de-designation of VA and VA -2 does not comply  
29 with RCW 36.70A.170(1) and RCW 36.70A.020(8) and was clearly erroneous.  
30

31 <sup>128</sup> Matrix at 5, Comprehensive Growth Management Plan NW Vancouver UGA-Map 1

32 <sup>129</sup> Comprehensive Growth Management Plan NW Vancouver UGA-Map 1

<sup>130</sup> *Ibid.*

1  
2 *VB (Vancouver)*

3 Intervenor Lagler Real Property, LLC, has an interest in this property, a 780 acres site,  
4 which it says will close the gap between the Vancouver UGA boundary to the south, and the  
5 Bush Prairie Rural Center to the north. Lagler Real Property discusses the County's  
6 findings for this area, which has Urban Reserve zoning, adjacent educational facilities, an  
7 airport, a 150-unit condominium project on the south, and a circulation plan in place. Three  
8 existing farms still exist in this area, but Lagler Realty says, and the County findings predict,  
9 that economic pressures will cause the existing dairy to move. The County's findings also  
10 conclude the presence of a railroad, state highway, and planned arterial expansion present  
11 unique economic development opportunities.<sup>131</sup>

12  
13  
14 Petitioners describe of this area as consisting of 77% prime soils and 33% critical areas and  
15 including three active farms. Unlike other areas, Petitioners point out that the County has  
16 not calculated the value of this area under alternative land uses, but claims this area has  
17 "unique development opportunities", which Petitioners argue is an impermissible factor.  
18 Petitioners point out that here the previous Urban Reserve Overlay for this area was also  
19 overturned by the Board. Also, Petitioners argue that instead of "closing the gap" between  
20 Vancouver and the Bush Prairie Rural Center, LAMIRDs are supposed to be separated from  
21 UGAs to avoid sprawl.<sup>132</sup>

22  
23  
24 **Board Discussion**

25 The County's matrix notes that this Area provides unique opportunities for industry along  
26 the railroad, SR 503, and 119<sup>th</sup> Street to utilize high capacity infrastructure, having a  
27 circulation plan in place for the area, and providing a greater tax base for the Battle Ground  
28 School District as reasons for de-designating this area. Additionally, the County says that  
29 rising transportation costs will cause the dairy to move closer to its suppliers. The matrix  
30

31  
32 <sup>131</sup> Johnson/Lagler Prehearing Brief at 13.

<sup>132</sup> Petitioners Reply Brief at 25.

1 also supports Petitioners' argument that the VB area is an area of prime soils (79%), 85% of  
2 the area is in current use programs, and three "commercial" farms exist in the area. The  
3 matrix also shows that the area the southern tip touches the Vancouver UGA, while the area  
4 is surrounded by rural land uses including a Rural Center to the north.  
5

6 This area barely adjoins the UGA and is neither characterized by urban growth nor adjacent  
7 to areas characterized by urban growth. The County's matrix supports Petitioners'  
8 argument that area has prime soils and existing farms. Petitioners cite factors such as  
9 unique development opportunities as a factor that should not be used to de-designate. As  
10 the Board discussed above, the presence of state highways and roads that serve urban and  
11 rural residents and farmers are neither urban nor rural facilities that detract from the long-  
12 term commercial significance of agricultural lands. The matrix mentions that water lines are  
13 present within the subareas boundaries. However the water line's capacity is not  
14 described. This is important as water lines can be an urban as well as rural service. Unique  
15 economic development opportunities and increasing a school districts tax base cannot  
16 undermine the GMA's conservation mandate. While higher land values under alternative  
17 uses can be considered, it cannot be a determinative factor or no agricultural land will ever  
18 be preserved. Intervenor and the County's argument that the dairy farm may have to move  
19 due to higher transportation costs is not a concrete fact that the land is no longer productive,  
20 but rather speculative.  
21  
22  
23

24 **Conclusion:** This area is not characterized by urban growth, nor is it adjacent to land  
25 characterized by urban growth. It touches the tip of the Vancouver UGA. The area has  
26 prime soils and is farmed so it is a land used or capable of being used for production based  
27 on land characteristics. Consideration of the WAC factors do not show that this land no  
28 longer has long-term commercial significance. This area still meets the Court's three-part  
29 test and the County's de-designation of this area was clearly erroneous.  
30  
31  
32

1 VC(Vancouver)

2 **Positions of the Parties**

3 Intervenor Vision First has an interest in this subarea, a 38 acre site, in the new Vancouver  
4 UGA. Vision First says that this property has never been farmed for commercial purposes,  
5 but cattle grazed on it until 2000, but was discontinued because cattle kept breaking through  
6 fences meeting with complaints from surrounding neighbors. Vision First summarizes the  
7 County's findings for de-designation as indicating water lines run through the subarea, the  
8 northern portion of the subarea has an urban reserve overlay, no parcels were identified as  
9 commercial farms by the Report, sewer lines and a school are adjacent to the area, and all  
10 prime soils are under a cluster subdivision.<sup>133</sup>

11  
12  
13 Intervenor Gustafson states that its property in the VC area has been used to produce grass  
14 hay and alfalfa, and has minimal agricultural management during most of the year.  
15 Gustafson puts forth a comparative analysis to demonstrate that the soils are not suitable  
16 without irrigation or drainage improvements, the losses that would be experienced from a  
17 variety of crops, land value under alternative uses, and the presence of public facilities and  
18 services.<sup>134</sup>

19  
20  
21 According to Petitioners, this area consists of two parcels, 18 and 19 acres in size, that have  
22 51% prime soils and 43% critical areas. Petitioners criticize Intervenor Gustafson reliance  
23 on the Globalwise Report and its author, emphasizing the author has a Masters degree in  
24 agricultural economics, but no expertise in soils. On this basis, Petitioners question the  
25 Gustafson's assertion that without irrigation crops would be subject to drought conditions.  
26 Petitioners assert that the soils on this property are classified prime, prime if drained, and  
27 farmland of statewide significance and can support a wide variety of crops. Petitioners  
28 dispute that the farm is only good for growing hay or small grains, since this is only the  
29  
30

31  
32 <sup>133</sup> *Ibid* at 17.

<sup>134</sup> *Ibid* at 9 and 10.

1 historical use of the farm.<sup>135</sup> This area consists of 416 acres consisting of 78% prime soils  
2 and 31% critical areas, according to Petitioners' description. While the cluster subdivision  
3 covers Class I and II soils, which Petitioners claim violates the GMA, they explain that the  
4 rest of the area that is not critical areas, has Class III soils. Petitioners further argue that a  
5 Right to Farm law should protect owners of farm animals from neighbors' complaints and  
6 that owner's decision not to farm does not make the land unsuitable for farming.<sup>136</sup>  
7

### 8 **Board Discussion**

9  
10 The County's reasons for de-designating this area is that is adjacent to urban residential  
11 development, and that it has low value farm land even though the County's matrix says that  
12 the area contains 51% prime soils. The County's decision map shows that these are Class  
13 III soils, a prime soil.<sup>137</sup> Petitioner asserts that the County's Agriculture Viability Study Areas  
14 for the Vancouver UGA East shows that the area is adjacent to the Vancouver UGA and  
15 surrounded by urban growth on the south and east. The matrix indicates that sewer lines  
16 are adjacent to the southern boundary.  
17

18 This area is adjacent to the Vancouver UGA and adjacent to an area within the UGA  
19 characterized by urban growth. Sewer lines are adjacent to property increasing its potential  
20 for urban development. Adjacency to an area characterized by urban growth and having  
21 sewer available at its boundary increases this area's development potential so the property  
22 no longer meets the Court's three-part test for an LTCS agricultural area. Here, although  
23 the area has prime soils, the area's relationship to area characterized by urban growth and  
24 with available urban services makes the decision to de-designate this area not clearly  
25 erroneous.  
26  
27  
28  
29

30 \_\_\_\_\_  
31 <sup>135</sup> Petitioners' Reply Brief at 25.

32 <sup>136</sup> Petitioners' Reply Brief at 26.

<sup>137</sup> Matrix at 6, Comprehensive Growth Management Plan NE Vancouver UGA – Map Deliberation Components.

1 Conclusion: The County's decision to de-designate VC area is not a clearly erroneous  
2 violation of RCW 36.70A.170(1) and RCW 36.70A.020(8).

3  
4 *Vancouver (VE)*

5 **Positions of the Parties**

6 Intervenor Hinton characterizes this area as being 74 parcels, totaling 416 acres, with most  
7 parcels under 10 acres and many under one acre. Hinton notes only a few parcels are  
8 greater than 20 acres and there is very limited agricultural production. Hinton owns 23  
9 parcels.<sup>138</sup>

10  
11 From the Globalwise Report, Hinton accounts that while all 74 parcels receive tax benefit for  
12 agricultural use, none are in agricultural production. Interviews of long-time residents  
13 detailed in the Report tell that steady expansion of residential development as the primary  
14 reason for land conversion, with the best example being Monet's Garden, which brought 42  
15 homes in the middle of designated agricultural land in the late 1990s. Hinton acknowledges  
16 the presence of prime soils in the area, but says water quality standards, high land prices,  
17 and an overarching inability to make a living at farming have determined the nature and type  
18 of agriculture in this area. Again, referencing the \$10,000 per acre figure that a farmer will  
19 pay for land, Hinton says that the Report informs land in the area is selling for alternative  
20 uses at \$40,000 to \$50,000 per acre. Like the analysis of the Gustafson property, the  
21 Report concludes that agricultural production would result in net losses.

22  
23  
24  
25 Other factors, arguing for de-designation, according to Hinton, are proximity to public  
26 services such as public schools, police, fire, schools, urban arterial traffic capacity, water  
27 from Clark County public utilities; sewer lines adjacent to boundary; parcel size; and  
28 residential subdivisions and the urban growth boundary abut the area.<sup>139</sup>

29  
30  
31  
32 <sup>138</sup> Intervenor Curt Gustafson, Hinton Development Corp. and MacDonald Properties Brief on Agricultural Issues at 11.

<sup>139</sup> *Ibid* at 14.

1 According to Petitioners' description, this area consists of 416 acres of which 78% are prime  
2 soils and 31% are critical areas. While the cluster subdivision covers Class I and II soils,  
3 which Petitioners claim violates the GMA, they explain that the rest of the area is not  
4 encumbered with critical areas and has Class III soils. Also, only a small area on the east  
5 has water and no sewer exists in the area, Petitioners state. Petitioners further argue that a  
6 Right to Farm law should protect owners of farm animals from neighbors' complaints and  
7 that owner's decision not to farm does not make the land unsuitable for farming.<sup>140</sup>  
8

9  
10 **Board Discussion**

11 A study of this area showed that, since 1990, this area has experienced a steady decline of  
12 farming.<sup>141</sup> While some of the soils in Area VE are prime, the County's Matrix noted that all  
13 prime soils for agricultural use are under the houses in the cluster subdivision. An  
14 economic analysis of farming in this area showed an annual loss of in a variety of  
15 agricultural practices.<sup>142</sup> These factors tend to show that Area VE is not economically  
16 capable of growing or sustaining agricultural crops or livestock<sup>143</sup> Furthermore, Area VE is  
17 adjacent to areas already characterized by urban growth, as seen by the presence of urban  
18 arterial traffic, water, sewer lines and other public services and facilities.  
19  
20

21 **Conclusion:** Petitioners have not carried their burden to show that de-designation of Area  
22 VE was clearly erroneous.  
23

24  
25 WA (Washougal)

26 While Petitioners challenge all of the County's de-designation, they do not offer any  
27 specifics about this area, a 253 acre site. Here the County's matrix notes that the area is  
28 adjacent to the urban growth boundary and the county's map confirms it is adjacent to area  
29

30 \_\_\_\_\_  
31 <sup>140</sup> Petitioners' Reply Brief at 26.

32 <sup>141</sup> See, Exhibit 5837.

<sup>142</sup> Id.

<sup>143</sup> See, City of Redmond v. CPSGMHB, 136 W.2<sup>nd</sup> 38, 53 1998).

1 characterized by urban growth. Less than half of the area has prime soils, although 71 % is  
2 in in current agricultural use. Public services exist in the UGA.

3  
4 **Conclusion:** The Petitioners have submitted only conclusory arguments in regard to the  
5 WA area and, therefore, have failed to carry their burden in demonstrating that the County's  
6 decision to de-designated the site was clearly erroneous.

7  
8 *WB (Washougal)*

9 Intervenor MacDonald owns a parcel consisting of 79 acres in this 116 acre subarea.  
10 MacDonald states that 25% of this property consists of land sloped at more than 15%,  
11 making it susceptible to erosion, most of the other soil on the property is Hesson clay loam,  
12 and the area is used for the production of hay or as pasture. Turning to the Globalwise  
13 Report, MacDonald recounts the analysis of the losses that raising cattle, growing hay, and  
14 Christmas trees would incur. Other reasons that MacDonald cites for why the property was  
15 properly de-designated is the ability to provide water, sewer and stormwater, being  
16 surrounded by small parcels that do not have agricultural/farm use tax status and the value  
17 of the land in the area being \$25,000 per acre.<sup>144</sup>

18  
19  
20  
21 Petitioners declare that this area consists of two large agricultural areas with 82% in prime  
22 soils, 5.89% in critical areas, and 100% in current agricultural tax status. Petitioners  
23 describe the area as being remotely located from the Washougal UGA and surrounded by  
24 open fields , forested land and rural residential development. Also, Petitioners point out  
25 there is no evidence of water to support employment and no analysis of the value of this  
26 land under alternate uses.<sup>145</sup>

27  
28  
29 **Board Discussion**

30  
31 <sup>144</sup> Intervenors Curt Gustafson, Hinton Development Corp. and MacDonald Properties Brief on Agricultural  
32 Issues at 17-20.

<sup>145</sup> Petitioners' Prehearing Brief at 27.  
FINAL DECISION AND ORDER  
Case No. 07-2-0027  
May 14, 2008  
Page 63 of 87

1 The County's matrix describes the land as having 82 % prime agricultural soils. Most soils  
2 appear to be Class I and II.<sup>146</sup> The matrix also says that it is to be brought into the area to  
3 provide tax base for the Battle Ground School District. The area is not adjacent to the UGA  
4 and no permits for development are nearby. Intervenor says that his land is not productive  
5 as a farm based on analysis by Globalwise. However, productivity is character of the soil as  
6 described by WAC 365-190-050. In evaluating critical areas, the cities and counties use  
7 Best Available Science to help designate critical areas. The resource that the GMA gives  
8 cities and counties is USDA soil characteristics and that is what the Board needs to rely on  
9 The County's Ordinance says that this area was de-designated because it no longer has  
10 long-term commercial significance.  
11

12  
13 **Conclusion:** Based on the County's decision making criteria, the Board finds the County  
14 erred in de-designating this land. This designation does not comply with RCW  
15 36.70A.020(8) and RCW 36.70A.170.  
16

17  
18 *La Center (Areas LA, LB -1, LC, LE)*  
19

### 20 Positions of the Parties

21 Petitioners summarize their objections in their Reply brief. They claim that LaCenter ignored  
22 rural land north and northeast of the city and instead expanded its UGA into agricultural  
23 lands and thrust a peninsula of urban development into agricultural lands. Petitioners argue  
24 that economic desire cannot be a basis for de-designation of commercially significant  
25 agricultural lands. The LB and LE areas of the UGA expansion are isolated from the UGA  
26 and surrounded by open fields, rural residences, and forest land, and have a high  
27 percentage of prime soils (56 – 80%) and of critical areas (36 – 46%), Petitioners assert.  
28  
29  
30  
31

32 <sup>146</sup> 6605 Matrix at 7. Washougal Map 1.

1 Petitioners further contend that the area is well suited for agriculture, but not for offices or  
2 shopping centers, and the area has no history of development and no water or sewer. <sup>147</sup>

3  
4 Intervenor LaCenter does not deny that this area has prime soils, but insists that this is the  
5 only area where a fast growing city (8.7% annually), with a limited tax base can expand.  
6 LaCenter declares that it explored expansion options in an EIS. Going north of the Lewis  
7 River would require an expensive bridge and south of the East Fork of the Lewis River was  
8 constrained by various wetlands. <sup>148</sup>

9  
10  
11 LaCenter argues that Petitioners use good soils as their only criterion, when the County can  
12 consider other factors. <sup>149</sup> LaCenter says that its situation is similar to that of Arlington's  
13 UGA which the Court of Appeals found a similar result as Clark County did. <sup>150</sup> LaCenter  
14 says that the County used the WAC factors to evaluate the area and concluded that  
15 proximity to public facilities - Interstate 5, and that ease that water and sewer could be  
16 delivered were valid reasons for de-designation. <sup>151</sup>

17  
18  
19 To answer Petitioners' challenge that the UGA contains lands that are not contiguous to the  
20 UGA, LaCenter replies that the UGA had to be long and skinny for several reasons: to  
21 follow existing transportation and utility corridors, to avoid critical areas, and to not add  
22 more land to accommodate its population allocation. <sup>152</sup>

## 23 24 25 **Board Discussion**

26 The County divided the La Center area in five areas for analysis: LA (6.85 acres adjacent to  
27 the UGA), LB-1 (218.81 acres adjacent to the UGA's eastern boundary) LB-2 (244.63 acres  
28

29 <sup>147</sup> Petitioners' Prehearing Brief at 28 and 29.

30 <sup>148</sup> Prehearing Brief of Intervenor Respondent City of LaCenter at 3.

31 <sup>149</sup> *Ibid* at 7.

32 <sup>150</sup> *Ibid* at 9.

<sup>151</sup> *Ibid* at 10.

<sup>152</sup> *Ibid* at 1, 12.

1 that on the east border I-5), LC (69.57 acres adjacent to the UGA), and LE (112.47 acres  
2 adjacent to I-5).

3  
4 Area LA is adjacent to the UGA ,City limits, and water and sewer, with few prime soils, even  
5 though 85% is in current use. The UGA that is near this area is characterized by urban  
6 growth with urban services. The combination of its relationship to an area characterized by  
7 urban growth and the availability of services supports the County's decision to de-designate  
8 this area. Likewise, LC is adjacent to area within the UGA that is characterized by urban  
9 growth that has available water and sewer. Although it has few prime soils, 79 % is enrolled  
10 in agricultural current use program. Again, its relationship to an area of characterized by  
11 urban growth and urban services show the County's decision to de-designate Area LC was  
12 not clearly erroneous.  
13  
14

15  
16 Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA  
17 characterized by urban growth. In fact, the County's matrix describes all the areas as having  
18 rural land uses in and adjacent to the areas. All the areas have a high percentage of prime  
19 soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas  
20 are capable of being farmed. LB -1 has water and sewer located at its eastern boundary.  
21 LB-2 and L-E have no public sewer or water available, the County's matrix describes the  
22 areas as being surrounded by rural land uses, open fields, and forested land. No permits  
23 have been issued in the vicinity. Both areas border I-5. The BOCC's reason for de-  
24 designating these areas is that it borders I-5 therefore presents a unique economic  
25 development opportunity for LaCenter. Here, the area is not adjacent to an area  
26 characterized by urban growth, has prime soils capable of being farmed, and has no public  
27 water and sewer available. Here adjacency to I-5 does not combine with other WAC factors  
28 to make these lands not viable for agricultural use. Petitioners are correct that LB-1 and LE  
29 still meets the *Lewis County's* Court three prong test. The BOCC desire to further economic  
30  
31  
32

1 development can not outweigh its duty to designate and conserve agricultural lands to  
2 assure the maintenance and enhancement of the agricultural industry.

3  
4 LaCenter presents its environmental impact analysis as evidence that it weighed other  
5 opportunities for economic development when considering its expansion into agricultural  
6 lands. The Board does not doubt LaCenter's need for more industrial and commercial land.  
7 However, the EIS does not lay out the how the County's jobs to population goals translates  
8 into acres of land needed for development. Nor, could the Board find anything in the EIS  
9 that acknowledged that alternatives to agricultural lands were being considered and found  
10 them described as rural lands with agriculture uses and one unit per 20 acre zoning.  
11 However, it is not LaCenter's need for urban land that is being evaluated here, but the  
12 County's rationale for de-designating this land. That is the first step needed to be taken  
13 before the land can be added to the UGA, and the de-designation of areas LB-2 and LE do  
14 not comply with the GMA's goals and requirements.  
15  
16

17  
18 **Conclusion:** The de-designation of Areas LA and LC are not clearly erroneous. The  
19 designation of LB-1, LB-2 and LE do not comply with RCW 36.70A.170(1) and RCW  
20 36.70A.020(8).  
21

22 *Battle Ground -BB*

23 Petitioners challenge all the de-designations, including this one, a 345 acre site, based on  
24 the fact that the County considered the use of inappropriate WAC factors, but does not offer  
25 specific critique of the factors used in the de-designation of the factors used to de-designate  
26 the agricultural lands that have been added to the UGAs.  
27  
28

29 **Board Discussion:**

30 The County directs us to its matrix and BOCC deliberations Our review of the County's  
31 maps and matrix show that the County considered that this area is adjacent to the City limits  
32

1 and an area characterized by urban growth. While the County's reason to add this to the  
2 Battle Ground school district tax base is not a legitimate reason to de-designate this land, it  
3 no longer meets the three part test.

4  
5 **Conclusion:** The decision to de-designate Area BB is not clearly erroneous.

6  
7 *Battleground - BC*

8 Petitioners challenge this de-designation, a 68 acre site, on the basis of the use of  
9 inappropriate factors on which to base the County's decision. The County provides no  
10 specific argument, except to direct us to its matrix and BOCC deliberations.

11  
12 **Board Discussion**

13 Here, the County's matrix shows that the area has 85.6% prime soils and 93% of the land is  
14 in the agricultural tax current use program. The County notes that a Rural Center is  
15 adjacent, but the rest of the area is characterized by open fields and forested lands. Water  
16 is available at the site and sewer and water are available in the neighboring Rural Center.  
17 The County's main reason to de-designate this land is to provide more tax base to Battle  
18 Ground and the school district.

19  
20  
21 Here a great majority of the land has prime soils and is currently farmed based on lands in  
22 the current ag/ farm tax program. The area is capable of being farmed. The fact that the  
23 area is adjacent to a Rural Center and water and sewer are available from there is not an  
24 appropriate factor to consider for de-designation. A rural center is a LAMIRD.

25 Without sewer, the availability of public utilities do not combine to make this area not viable  
26 for agriculture.

27  
28  
29 Finally, the record reflects that the County's main reason for de-designating this area was  
30 to provide tax base for the City and the School District. This factor is not tied to the need of  
31  
32

1 the agricultural industry and if used, would endanger a significant amount of designated  
2 agricultural lands to de-designation.

3  
4 Conclusion: The land in Area BC is still capable of being farmed based on soils alone and  
5 is not located in a relationship to an area the GMA considers urban growth. The factors the  
6 County used to de-designate this Area BC are clearly erroneous and fail to comply with  
7 RCW 36.70A.170 (1) and RCW 36.70A.020(8).  
8

9  
10 ***Issue : Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060,***  
11 ***36.70A.110(1) & (3) in Ordinance No. 2007-09-13 by including land within Urban***  
12 ***Growth Areas that is not characterized by urban growth, should be designated***  
13 ***as agricultural land, and is adjacent to agricultural land?***

14 The GMA recognizes three types of land: urban, rural, and natural resource, which includes  
15 agricultural lands. From its very beginning, the GMA required the designation of natural  
16 resource lands, including agricultural land, as the first step of the planning process. The  
17 rationale for requiring the designation of agricultural lands before anything other stage in the  
18 planning process was to prevent the irreversible loss of those lands to development and  
19 provide jurisdictions with the ability to conserve these lands. These first agricultural lands  
20 designations occurred in the mid-90s. The Boards have held, and the County recognizes,  
21 that to de-designate agricultural lands the County must go through the same process and  
22 criteria it did to designate them.<sup>153</sup>  
23  
24

25 Once lands have been de-designated they become candidates for consideration for urban  
26 growth. In *Futurewise v. Skagit County*,<sup>154</sup> the Board held that for any land to be included  
27 in the UGA it must be needed to accommodate urban population and supporting land uses.  
28 Counties and cities must “show their work” and provide supportable rationale to determine  
29

30  
31 <sup>153</sup> *Futurewise v. Skagit County*, WWGMHB Case No.05-2-0012c(Final Decision and Order, September 25,  
32 2005) at 18-19

<sup>154</sup> *Ibid* at 21-22.

1 how much land they require to accommodate their projected needs. Here, the County's  
2 projected need for the lands has not been challenged nor has its ability to provide for urban  
3 services to these areas over the 20-year life of the plan before the Board.

4  
5 If these lands are *properly* de-designated, the GMA does not prohibit the County from  
6 considering the land as an area for inclusion within an urban growth area. Lands that  
7 were not *appropriately* de-designated are not candidates for inclusion in the UGA and do  
8 not comply with RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060, 36.70A.110(1) & (3). The  
9 Record reflects that the County's process to de-designate and to the add land to the UGAs  
10 was combined in a single process.  
11

12  
13 As note *supra*, the County's de-designation of agricultural lands that were compliant with the  
14 GMA and therefore these lands are available for inclusion within their respective UGAs.  
15 The Board finds no error on the part of Clark County in this regard.  
16

17  
18 Those agricultural lands for which the Board found the County's process did not reflect the  
19 requirements of the GMA **CAMAS – CA-1 (342.56 acres), CAMAS – CB (402.19 acres),**  
20 **LA CENTER LB-1 (218.81 acres), LA CENTER LB-2 (244.53 acres), LA CENTER LE**  
21 **112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER – VA (125.02 acres),**  
22 **VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB (780.43 acres), WASHOUGAL –**  
23 **WB (116.06 acres)** were not available for consideration or inclusion within any UGA.<sup>155</sup>  
24

## 25 26 **INVALIDITY**

27 Petitioners request the Board enter a finding of invalidity on the areas of agricultural lands  
28 inappropriately designated and included with the UGA expansions. The basis for this  
29 request is to protect those lands from potential development given that Washington's  
30

31  
32 <sup>155</sup> Agricultural lands may be including within a UGA if a jurisdiction has adopted a Transfer of Development Rights (TDR) program pursuant to RCW 36.70A.060(4). Clark County has not adopted such a program.

1 Vested Rights Doctrine and ensure that the GMA's goals in regard to agricultural  
2 conservation and urban sprawl are realized.<sup>156</sup>

3  
4 Applicable Law

5 The GMA's Invalidity Provision, RCW 36.70A.302, provides:

- 6 (1) A board may determine that part or all of a comprehensive plan or development  
7 regulation are invalid if the board:  
8 (a) Makes a finding of noncompliance and issues an order of remand under RCW  
9 36.70A.300;  
10 (b) Includes in the final order a determination, supported by findings of fact and  
11 conclusions of law, that the continued validity of part or parts of the plan or  
12 regulation would substantially interfere with the fulfillment of the goals of this  
13 chapter; and  
14 (c) Specifies in the final order the particular part or parts of the plan or regulation  
15 that are determined to be invalid, and the reasons for their invalidity.  
16 (2) A determination of invalidity is prospective in effect and does not extinguish rights  
17 that vested under state or local law before receipt of the board's order by the city or  
18 county. The determination of invalidity does not apply to a completed development  
19 permit application for a project that vested under state or local law before receipt of  
20 the board's order by the county or city or to related construction permits for that  
21 project.  
22  
23  
24

25 Discussion

26 In the discussion of the Legal Issues in this case, the Board found and concluded that Clark  
27 County's adoption of Ordinance No. 2007-09-13 was **clearly erroneous** in regard to several  
28 areas for which it removed agricultural designation. These actions were **non-compliant**  
29 with the requirements of RCW 36.70A.170 because it requires the designation of  
30  
31

32 <sup>156</sup> Petitioners' Prehearing Brief, at 31.

1 agricultural lands of long-term commercial significance. The Board further found and  
2 concluded that the County's action **was not guided by the goals** of the Act, specifically  
3 Goal 8 – the Natural Resources Goal – and Goal 2 – Preventing Urban Sprawl. The Board  
4 is **remanding** Ordinance No. 2007-09-13, in regard to the designation of certain agricultural  
5 lands, with direction to the County to take legislative action to comply with the goals and  
6 requirements of the GMA as set forth in this Order.  
7

8 A Board may enter an order of invalidity upon a determination that the continued validity of a  
9 non-compliant city or county enactment substantially interferes with fulfillment of the goals of  
10 the GMA. RCW 36.70A.302(1)(b). As set forth in the findings and conclusions contained  
11 within this Order, Clark County's adoption of Ordinance No. 2007-09-13, which fails to  
12 conserve agricultural lands and maintain and enhance the agricultural industry, interferes  
13 with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(2) and .020(8).  
14  
15

16 As noted in this Order, the Board finds the following areas **non-compliant with the GMA**  
17 **and invalidates Ordinance No. 2007-09-13 as it pertains to these areas:**

- 18 **CAMAS – CA-1 (342.56 acres)**
- 19 **CAMAS – CB (402.19 acres)**
- 20 **LA CENTER LB-1 (218.81 acres)**
- 21 **LA CENTER LB-2 (244.53 acres)**
- 22 **LA CENTER LE (112.47 acres)**
- 23 **RIDGEFIELD – RB-2 (199.69 acres)**
- 24 **VANCOUVER – VA (125.02 acres)**
- 25 **VANCOUVER – VA-2 (22.89 acres)**
- 26 **VANCOUVER – VB (780.43 acres)**
- 27 **WASHOUGAL – WB (116.06 acres)**

**VI. FINDINGS OF FACT**

1. Clark County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. On September 9, 2007 Clark County passed Ordinance 2007-0913 de-designating 19 areas of previously designated lands of long-term commercial significance and added to Clark County cities' UGAs.
3. On November 16, 2007, the Western Washington Growth Management Hearings Board (Board) received a Petition for Review (PFR) from John Karpinski, Clark County Natural Resource Council, and Futurewise (collectively, Petitioners). The PFR challenged the Clark County's adoption of Ordinance No. 2007-09-13.
4. GM Camas, T3G LLC, Daryl Germann, Curt Gustafson, McDonald Properties, Hinton Development Corporation, Johnston Dairy LLC, ET Royal Family Partnership, Pacific Lifestyle Homes, Vision First LLC, Renaissance Homes, Lageler Real Property LLC (collectively, Johnston Dairy Intervenors) the Building Industry Association of Clark County., and the City of LaCenter filed motions intervene in this case.
5. The No-Action Alternative is the adopted September 2004 Growth Management Plan adopted urban growth boundaries.
6. The record shows that the County spent time reviewing the data and revised several assumptions, including the growth rate.
7. The County says the data showed that since 1990 the County's growth rate had exceeded 2%.
8. The comprehensive plan is a non-project action based on broad range of assumptions.
9. The record shows the County adopted a public participation program for revising its comprehensive plan.
10. CCC 40.240.030(C) explains how the Clark County will be amended.
11. The Board's review of the Index to the Record shows that this process went on for two years and was extended on several occasions.

- 1 12. The Index shows the public participation process was lengthy, broad, and generally  
2 with good notification through newspaper announcements and an e-mail distribution  
3 list.
- 4 13. The Board finds that the County's failure to disseminate its public participation  
5 program was not a clearly erroneous violation of the spirit of GMA public participation  
6 requirements.
- 7 14. The County's principles and values statement is not an amendment to the  
8 comprehensive plan nor is it a requirement of the GMA.
- 9 15. The discussion of the proposed expansion of the UGA went on for almost two years  
10 after this work session, and the process included many workshops, an environmental  
11 review process, and several public hearings, giving four actual working days notice of  
12 this November 29, 2005 work session.
- 13 16. The County released the BOCC's June 27 Map Preliminary Recommendations just  
14 three days prior to the July 5, 2007 public hearing in violation of CCC 40.510.040D.
- 15 17. The index shows that four subsequent public hearings subsequent to the July 25,  
16 2007 hearing were held before the County adopted the revised CP.
- 17 18. Petitioners had many opportunities to participate in the process and provide  
18 comments after the meeting where only proponents of UGA expansions were allowed  
19 to address the Board of County Commissioners.
- 20 19. The verbs in the economic development goal are similar to the verbs in the  
21 recreational goal.
- 22 20. The economic development goal have any corresponding requirements.
- 23 21. Almost all of the lands that Clark County considered could be targeted for de-  
24 designated based on the WAC factor of value under alternative uses.
- 25 22. Rural services should not be of the scale and intensity that interfere with agricultural  
26 lands.
- 27 23. An Urban Reserve Area is an overlay designation on land still designated as  
28 agricultural resource land.
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- 1 24. The matrix shows that in this area, there are four farms that generate \$25,000 or  
2 more, the area is made of 73% prime agriculture soils, and 85% of the area is in  
3 ag/current use in Area CA.
- 4 25. In Area CB, Johnston's operation is not the only farm in the area and the Matrix  
5 clearly shows that the land is capable of being farmed.
- 6 26. In Area CB, the County's other reason for de-designating this property was that it  
7 provides an unique opportunity for Camas, due to the mill's downsizing.
- 8 27. Area RB -1 is almost completely surrounded by the Ridgefield UGA and urban uses.
- 9 28. While Area RB-2 touches the UGA, it is not adjacent to an area characterized by  
10 urban growth and no sewer and water lines are indicated near the subarea, except  
11 what appear to be limited to an isolated subdivision.
- 12 29. In Area RB-2 the majority of the areas has prime soils, so is capable of being  
13 farmed as well as having 85.9% in current tax, indicating use of the land as farms, as  
14 well as one farm generating an income of \$25,000, showing the land is capable of  
15 being farmed.
- 16 30. The presence of critical areas, a road that serves agricultural and rural areas, and a  
17 school are not criteria for de-designation, as described *supra*. No WAC factors are  
18 implicated to suggest a lack of long-term commercial significance in Area RB-2.
- 19 31. Area RC adjoins a city limits and a UGA.
- 20 32. VA and VA-2 are near the UGA but are not near areas characterized by urban  
21 growth or adjacent to areas characterized by urban growth.
- 22 33. Further examination of the matrix shows that the VA area is made up of 85% prime  
23 soils, and prime soils comprise about 59% of VA -2. The land within the subareas  
24 and surrounding the area is comprised of rural land uses, open fields, forested land,  
25 interspersed with residential and farm buildings. About 40% of VA is in current  
26 ag/farm status, while none of VA-2 has current ag/farm current use.<sup>157</sup> The map  
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1 shows a water line at the southern edge of the parcel of the VA area (33. An  
2 evaluation of the WAC factors do not indicate the area is vulnerable to more intense  
3 uses.

4 34. In Area VB, 85% of the area is in current use programs, and three “commercial”  
5 farms exist in the area. The matrix also shows that the area the southern tip touches  
6 the Vancouver UGA, while the area is surrounded by rural land uses including a  
7 Rural Center to the north.  
8

9 35. In Area VB, 85% of the area is in current use programs, and three “commercial”  
10 farms exist in the area. The matrix also shows that the area the southern tip touches  
11 the Vancouver UGA, while the area is surrounded by rural land uses including a  
12 Rural Center to the north.  
13

14 36. Area VB barely touches the UGA and itself is not characterized by urban growth.  
15 The area’s water line’s capacity is not described. This is important as water lines  
16 can be an urban as well as rural service.

17 37. Area is adjacent to the Vancouver UGA and adjacent to an area within the UGA  
18 characterized by urban growth. Sewer lines are adjacent to property increasing its  
19 potential for urban development. Adjacency to an area characterized by urban  
20 growth and having sewer available at its boundary increases this area’s development  
21 potential.  
22

23 38. Area VC is adjacent to the Vancouver UGA and adjacent to an area within the UGA  
24 characterized by urban growth. Sewer lines are adjacent to property increasing its  
25 potential for urban development.

26 39. A study of this area showed that, since 1990, this area has experienced a steady  
27 decline of farming.<sup>158</sup> While some of the soils in Area VE are prime, the County’s  
28 Matrix noted that all prime soils for agricultural use are under the houses in the  
29 cluster subdivision.  
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32 <sup>158</sup> See, Exhibit 5837.

- 1 40. While some of the soils in Area VE are prime, the County's Matrix noted that all  
2 prime soils for agricultural use are under the houses in the cluster subdivision. An  
3 economic analysis of farming in this area showed an annual loss of in a variety of  
4 agricultural practices.
- 5 41. In Area WA the County's matrix notes that the area is adjacent to the urban growth  
6 boundary and the county's map confirms it is adjacent to area characterized by  
7 urban growth. Less than half of the area has prime soils, although 71 % is in current  
8 agricultural use.
- 9 42. The County's matrix describes the land as having 82 % prime agricultural soils.  
10 Most soils appear to be Class I and II. <sup>159</sup> The matrix also says that it is to be brought  
11 into the area to provide tax base for the Battle Ground School District. The area is  
12 not adjacent to the UGA and no permits for development are nearby.
- 13 43. The County's matrix describes the land as having 82 % prime agricultural soils.  
14 Most soils appear to be Class I and II. <sup>160</sup> The matrix also says that it is to be  
15 brought into the area to provide tax base for the Battle Ground School District. The  
16 area is not adjacent to the UGA and no permits for development are nearby.
- 17 44. LA is adjacent to the UGA ,City limits, and water and sewer, with few prime soils.
- 18 45. LC is adjacent to area within the UGA that is characterized by urban growth that has  
19 available water and sewer
- 20 46. Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA  
21 characterized by urban growth. In fact, the County's matrix describes all the areas as  
22 having rural land uses in and adjacent to the areas. All the areas have a high  
23 percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm  
24 current tax program. All areas are capable of being farmed. LB -1 has water and  
25 sewer located at its eastern boundary.
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32 <sup>159</sup> 6605 Matrix at 7. Washougal Map 1.

<sup>160</sup> 6605 Matrix at 7. Washougal Map 1.

- 1 47. The County's maps and matrix show that the County considered that this area is  
2 adjacent to the City limits and an area characterized by urban growth in Area BB.  
3 48. In Area BC, a great majority of the land has prime soils and is currently farmed based  
4 on lands in the current ag/ farm tax program. The area is capable of being farmed.  
5 49. The fact that the area is adjacent to a Rural Center and water and sewer are  
6 available from there is not an appropriate factor to consider for de-designation. A  
7 rural center is a LAMIRD. Without sewer, the availability of public utilities do not  
8 combine to make this area not viable for agriculture. (Invalidity Finding)  
9  
10 50.. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.  
11

## 12 **V. CONCLUSIONS OF LAW**

- 13 **A.** The Board has jurisdiction over the matter and the parties in this case.  
14 **B.** Petitioners have standing to participate in this case.  
15 **C.** Intervenors have been granted leave to participate in this case.  
16 **D.** The Board finds that this decision to use the 2004 Growth Management Plan adopted  
17 urban growth boundaries is not clearly erroneous pursuant to WAC 197-11-442, and  
18 RCW 43.21C.090.  
19 **E.** The County's failure to disseminate its public participation program was not a clearly  
20 erroneous violation of the GMA public participation requirements (RCW 36.70A.140,  
21 RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A. 130).  
22 **F.** The Board does not have jurisdiction to decide whether the public participation  
23 process for the adoption of the principles/values statement pursuant to RCW  
24 36.70A.280(1).  
25 **G.** The County's decision to de-designate the CA-1 are and the CB area was clearly  
26 erroneous and does not comply with RCW 36.70A.020(8) and 36.70A.170.  
27 **H.** The de-designation of RB-1 complies with RCW 36.70A.170(1) and RCW  
28 36.70A.020(8).  
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- 1 I. The de-designation of Area RB-2 does not comply with RCW 36.70A.170(1)(a) and  
2 RCW 36.70A.020(8) and was clearly erroneous
- 3 J. The de-designation of Area RC was not clearly erroneous.
- 4 K. Based on the foregoing, the de-designation of VA and VA -2 does not comply with  
5 RCW 36.70A.170(1) and RCW 36.70A.020(8) and was clearly erroneous.
- 6 L. The designation of Area VB does not complies with RCW 36.70A.170(1) and RCW  
7 36.70A.020(8).
- 8 M. The de-designation of Area VC complies with the RCW 36.70A. 170(1).
- 9 N. The de-designation of Area VC complies with RCW 36.70A.170(1) and RCW  
10 36.70A.020(8).
- 11 O. The de-designation of Area WB does not comply with RCW 36.70A.170(1) and RCW  
12 36.70A. 020(8).
- 13 P. The designation of LB -1 , LB-2 and LE do not comply with RCW 36.70A.170(1) and  
14 RCW 36.70A.020(8).
- 15 Q. Areas LA and LC's de-designation comply with the GMA.
- 16 R. The public process for the adoption of the County's revised CP was not a clearly  
17 erroneous violation of RCW 36.70A.140, RCW 36.70A.130(2), RCW 36.70A.035,or  
18 RCW 36.70A.070.
- 19 S. Area BB does comply with RCW 36.70A.170 and RCW 36.70A.020(8).
- 20 T. Area BC does not comply with RCW 36.70A.020(8) and RCW 36.70A.170.
- 21 U. The following Areas do not comply with RCW 36.70A.170(1) and interfere with RCW  
22 36.70A.020 (2), and (8): CAMAS – CA-1 (342.56 acres) CAMAS – CB (402.19  
23 acres), LA CENTER LB-1 (218.81 acres), LA CENTER LB-2 (244.53 acres), LA  
24 CENTER LE (112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER –  
25 VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB  
26 (780.43 acres), WASHOUGAL – WB (116.06 acres), Area BC.
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VIII. ORDER

Compliance Due	November 12, 2008
Compliance Report and Index to Compliance	November 24, 2008
Any Objections to a Finding of Compliance and Record Additions/Supplements Due	December 8, 2008
County's Response Due	December 22, 2008
Compliance Hearing (location to be determined)	January 6, 2009

Entered this 14th day of May 2008.

Holly Gadbow, Board Member

James McNamara, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

**Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330.** The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

**Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

**Enforcement.** The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all

1 parties within thirty days after service of the final order, as provided in RCW  
2 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
3 but service on the Board means actual receipt of the document at the Board office  
4 within thirty days after service of the final order.

5 Service. This Order was served on you the day it was deposited in the United States  
6 mail. RCW 34.05.010(19)  
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## APPENDIX A PROCEDURAL HISTORY

### *John Karpinski, et al v. Clark County WWGMHB Case No. 07-2-0027*

On November 16, 2007, the Western Washington Growth Management Hearings Board (Board) received a Petition for Review (PFR) from John Karpinski, Clark County Natural Resource Council, and Futurewise (collectively, Petitioners). The PFR challenged the Clark County's adoption of Ordinance No. 2007-09-13. The case was assigned No. 07-2-0027.

On November 26, 2007, the Board issued its Notice of Hearing and Preliminary Schedule for the matter.

On December 10, 2007, the Board received GM Camas LLC's Motion to Intervene, seeking intervention on behalf of the County.

On December 12, 2007, the Board received several Motions to Intervene. Motions were filed by T3G LLC, Daryl Germann, Curt Gustafson, McDonald Properties, Hinton Development Corporation. A motion was also received from Johnston Dairy LLC, ET Royal Family Partnership, Pacific Lifestyle Homes, Vision First LLC, Renaissance Homes, Lageler Real Property LLC (collectively, Johnston Dairy Intervenors.. All parties sought intervention on behalf of the County.

On December 14, 2007, the Board held its Prehearing Conference in this matter.

On December 20, 2007, the Board received Clark County's Index of the Record.

On December 21, 2007, the Board received Petitioners' Revised Statement of Issues Two and Three.

On December 28, 2007, the Board received Intervenor Johnston Dairy's Objections to the Revised Statement of Issues.

On December 28, 2007, the Board received Intervenors MacDonal Properties, Hinton Development, Gustafson, and Germann's Joinder and Response to Revised Statement of Issues in regard to Intevrnors Johnston Dairy's Objections to Revised Statement of Issues.

On January 2, 2008, the Board sent correspondence to the parties in regard to the Revised Issue Statement.

1 On January 2, 2008, the Board issued several Orders on Intervention. An Order Granting  
2 Intervention was issued to GM Camas LLC and an Order Granting Intervention was issued  
3 collectively to Johnson Dairy Intervenors, MacDonald Properties, Daryl Germann, Curt  
4 Gustafson, T3G LLC, and Hinton Development.

5 On January 3, 2008, the Board received Petitioner's Stipulated Additions and Revisions to  
6 Index to the Record.

7 On January 7, 2008, the Board received from Intervenors a Supplemental Objection to  
8 Petitioners' Revised State of Issues.

9 On January 8, 2008, the Board received from Petitioners their Second Revised Statement of  
10 Issue Two.

11 On January 9, 2008, the Board received the Building Industry Association of Clark County's  
12 Motion to Intervene.

13 On January 10, 2008, the Board received the County's approval of Petitioners' Stipulated  
14 Additions and Revisions to the Index to the Record.

15 On January 10, 2008, the Board issued its Prehearing Order in this matter.

16 On January 10, 2008, the Board received the County's Second Objection to the Second  
17 Revised Statement of Issue Two.

18 On January 11, 2008, the Board sent correspondence to the parties in regard to the Issue  
19 Statement.

20 On January 14, 2008, the Board received the City of La Center's Motion to Intervene.

21 On January 17, 2008, the Board received Intervenors Johnston Dairy's Motion to Strike  
22 Issues 2(c) and 2(d).

23 On January 25, 2008, the Board received Petitioners' Response to Intervenors' Motion to  
24 Strike Issues 2(c) and 2(d).

25 On January 28, 2008, the Board issued its Order Granting Intervention to the City of La  
26 Center.

27 On January 28, 2008, the Board issued its Order Granting Intervention to the Building  
28 Industry Association of Clark County.

29 On February 1, 2008, the Board received Petitioners' Motion to Supplement the Record.

1 On February 11, 2008, the Board sent correspondence to the parties in regard to  
2 Intervenor's Motion to Strike.  
3  
4 On February 13, 2008, the Board issued its Order Granting Motion to Strike Issues 2(c) and  
5 2(d).  
6 On February 13, 2008, the Board sent correspondence to the parties notifying them that the  
7 Presiding Officer in this matter was being changed. Holly Gadbow became Presiding  
8 Officer.  
9 On February 25, 2008, the Board received Clark County's Stipulated Additions to the Index  
10 to the Record.  
11 On February 25, 2008, the Board received Petitioners' Prehearing Brief, with attachments.  
12  
13 On March 5, 2008, the Board issued its Notice of Change of Date and Hearing Location for  
14 the Hearing on the Merits.  
15 On March 17, 2008, the Board received Intervenor Gustafson, Hinton Development, and  
16 MacDonald Properties' Prehearing Brief on Agricultural Land Issues, with attachments.  
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18 On March 17, 2008, the Board received Intervenor T3G LLC and Germann's Prehearing  
19 Brief on SEPA Issues, with attachments.  
20 On March 17, 2008, the Board received GM Camas LLC's Prehearing Brief and Motion to  
21 Supplement the Record, with attachments.  
22 On March 17, 2008, the Board received Intervenor Johnston Dairy's Prehearing Brief, with  
23 attachments.  
24 On March 17, 2008, the Board received Intervenor City of La Center's Prehearing Brief.  
25  
26 On March 18, 2008, the Board received Clark County's General Prehearing Brief, with  
27 attachments and Clark County's Prehearing Brief on SEPA Issue, with attachments.  
28 On March 21, 2008, the Board received Intervenor City of La Center's Motion to Supplement  
29 the Record, with attachments.  
30  
31 On March 28, 2008, the Board received Petitioners' Prehearing Reply Brief and Motion to  
32 Supplement the Record, with attachments.

1 On April 1, 2008, the Board held its Hearing on the Merits for this matter. Present for the  
2 Western Washington Growth Management Hearings Board were Board Members James  
3 McNamara and Holly Gadbow; Board Member Gadbow presiding. Petitioners were  
4 represented by Keith Scully. Respondent Clark County was represented by Richard Lowry  
5 and Richard Settle. Marty Snell also attended for the County. Intervenor City of La Center  
6 was represented by Daniel Kearns. Intervenors Johnston Dairy LLC and Lageler Real  
7 Property LLC were represented by Stephen Horenstein and James Howsley. Intervenors  
8 Gustafson, Hinton Development, and MacDonald Properties were represented by Randall  
9 Printz. Intervenors T3G LLC and Germann were represented by Michael Simon.  
10 Intervenor GM Camas LLC was represented by Alexander Mackie. No other intervenor  
11 filed a brief or was represented at the hearing.  
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**APPENDIX B  
PRELIMINARY MATTERS**

***John Karpinski, et al v. Clark County WWGMHB Case No. 07-2-0027***

Motions to Supplement the Record

Several Motions to Supplement the Record were filed in conjunction with the parties briefing. Both the GMA, at RCW 36.70A.290(4), and the Board's Rules of Practice and Procedure, at WAC 242-02-540, permit the additional evidence subject to a finding by the Board that such additional evidence would be necessary or of substantial assistance to the Board in reach its decision.

- Intervenor GM Camas LLC

In conjunction with its Prehearing Brief, Intervenor GM Camas LLC seeks the addition of an October 2, 2006 letter drafted by this Intervenor to Clark County's Department of Community Planning. This letter contains GM Camas's comments on the DEIS for the update of the Comprehensive Plan.<sup>161</sup>

- Intervenor City of La Center

Subsequent to the filing of its Prehearing Brief, Intervenor City of La Center filed a Motion to Supplement the Record with the City's FEIS for the La Center Comprehensive Plan Amendment, dated December 19, 2006.<sup>162</sup> The FEIS analyzed the City's proposal to expand its UGA.

- Petitioners Karpinski, et al.

In conjunction with its Reply Brief, Petitioners seek the addition of a May 24, 2005 News Release issued by Clark County which Petitioners contend demonstrates Clark County's

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<sup>161</sup> Intervenor's GM Camas LLC Prehearing Brief, at 19.

<sup>162</sup> Intervenor City of La Center Motion to Supplement, at 1.

1 public participation violations.<sup>163</sup> In addition, Petitioners seek addition of a September 22,  
2 2006 letter drafted by Petitioners to County Commissioner Morris commenting on the  
3 County's EIS and the Growth Plan Alternatives.<sup>164</sup>  
4

5 **Conclusion**

6 The Board did not receive, orally or in writing, any objections to the proposed additions.  
7 The Board finds these documents are relevant to the issues before the Board in this matter  
8 and will be of substantial assistance to the Board when analyzing the issues presented.  
9

10 **The Record shall be supplemented with these documents.**

11 Motion to Intervene

12 The Board notes that the Building Industry Association of Clark County (BIACC) filed a  
13 Motion to Intervene, with the Board subsequently granting this motion.<sup>165</sup> Despite this,  
14 BIACC did not submit a brief in this matter nor did they participate at the Hearing on the  
15 Merits. **Therefore, the Board concludes BIACC has abandoned any interest in this**  
16 **matter and is dismissed as an intervenor.**  
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31 <sup>163</sup> Petitioners' Reply Brief, at 5.

32 <sup>164</sup> Petitioners' Reply Brief, at 5

<sup>165</sup> January 9, 2008 BIACC Motion to Intervene; January 28, 2008 Board's Order Granting Intervenor Status to BIACC.